

COMMONWEALTH OF PENNSYLVANIA.

DEPARTMENT OF AGRICULTURE.

DAIRY AND FOOD DIVISION.

LAW BULLETIN.

Containing the Law Creating a Department of Agriculture in Pennsylvania,
the various Acts of Assembly Committed to the Dairy and Food
Division for Enforcement, a Brief Digest of Numerous
Decisions of Courts Relating to the Aforesaid
Laws, and Rules and Regulations.



N. B. CRITCHFIELD, *Secretary of Agriculture.*

JAMES FOUST, *Dairy and Food Commissioner.*

OLIVER D. SCHOCK, *Assistant Dairy and Food Commissioner.*

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PENNSYLVANIA DEPARTMENT OF AGRICULTURE.

OFFICIAL LIST.

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PREFACE.

The following compilation of the statutes relating to the creation of the office of Dairy and Food Commissioner and his duties, etc., under such statutes, are published to meet the demand coming from persons who desire the information they contain.

The call for such information is great, and as this publication contains the Acts of Assembly, the enforcement of which is placed in the hands of the Dairy and Food Commissioner, it is of special importance.

There is no more effectual method for securing obedience to law than that of giving notice to the public of its requirements; and any person wishing to be informed, whether he be manufacturer, dealer or consumer, can secure proper information upon this subject by applying to the Dairy and Food Commissioner for this Bulletin.

A brief summary of various court decisions relating to these statutes is appended, and will be found convenient for reference by attorneys and others interested.

A handwritten signature in cursive script, reading "A. B. Critchfield". The signature is written in dark ink and is positioned above the printed title.

Secretary of Agriculture.

DEPARTMENT OF AGRICULTURE.

DAIRY AND FOOD DIVISION.

HARRISBURG, PENNSYLVANIA, *Sept. 1st, 1909.*

To Whom it may Concern:

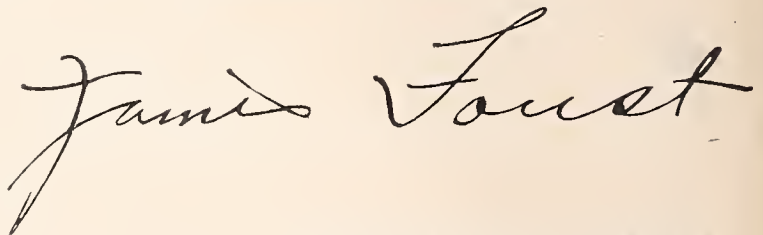
The accompanying digest of Acts of Assembly relating to the organization of the Department of Agriculture, and the Dairy and Food Division in particular, is respectfully presented for the information of all interested in the manufacture, sale or use of dairy and food products.

The several preceding large editions of bulletins of a similar character are entirely exhausted, and the present edition has therefore been prepared and printed to meet the constantly increasing demand from manufacturers, dealers and others for information concerning such legislation as is included within the limited space of this publication.

Special attention is directed to the important dairy and food laws enacted by the Legislature of 1909, which are printed within the pages of this Bulletin. The rules and regulations relating to the new Pure Food Act will also prove of interest and value to those concerned.

The continued favorable co-operation of the press, trade and the public in general, in enforcing the aforesaid laws, is respectfully requested, believing that the cause is a most worthy one, protecting human life, as well as preventing gross fraud and deception in the sale of dairy and food products.

Very respectfully yours,

A handwritten signature in cursive script, reading "James Foust". The signature is written in dark ink and is positioned above the printed title of the signatory.

Dairy and Food Commissioner.

ACT CREATING A DEPARTMENT OF AGRICULTURE.

AN ACT

To establish a Department of Agriculture and to define its duties and to provide for its proper administration.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That there be and hereby is established a Department of Agriculture, to be organized and administered by an officer who shall be known as the Secretary of Agriculture, who shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term of four years at an annual salary of three thousand five hundred dollars; and, who before entering upon the duties of his office shall take and subscribe the oath prescribed in Article seven of the Constitution. Said secretary shall be ex-officio secretary of the State Board of Agriculture, and shall succeed to all the powers and duties now conferred by law upon the secretary of said Board.

Section 2. That it shall be the duty of the Secretary of Agriculture, in such ways as he may deem fit and proper, to encourage and promote the development of agriculture, horticulture, forestry and kindred industries; to collect and publish statistics and other information in regard to the agricultural industries and interests of the State; to investigate the adaptability of grains, fruits, grasses and other crops to the soil and climate of the State, together with the diseases to which they are severally liable and the remedies therefor; to obtain and distribute information on all matters relating to the raising and care of stock and poultry, the best methods of producing wool and preparing the same for market, and shall diligently prosecute all such similar inquiries as may be required by the agricultural interests of the State, and as will best promote the ends for which the Department of Agriculture is established. He shall give special attention to such questions relating to the valuation and taxation of farm land, to the variation and diversification in the kinds of crops and methods of cultivation and their adaptability to changing markets as may rise from time to time in consequence of a change of methods, means and rates of transportation, or in the habits or occupation of the people of the State and elsewhere, and shall publish, as frequently as practicable, such information thereon as he shall deem useful. In the performance of the duties prescribed by this act, the Secretary of Agriculture shall, as far as practicable, make use of the facilities provided by the State Agricultural Experiment Station, the State Board of Agriculture and the various State and county societies and organizations maintained by agriculturists and horticulturists, whether with or without the aid of the State, and shall, as far as practicable, enlist the aid of the State Geological Survey for the purpose of obtaining and publishing useful information respecting the economic relations of geology to agriculture, forestry and kindred industries. He shall

make an annual report to the Governor, and shall publish, from time to time, such bulletins of information as he may deem useful and advisable. Said report and bulletins shall be printed by the State Printer in the same manner as other public documents, not exceeding five thousand copies of any one bulletin.

Section 3. That it shall be the duty of the Secretary to obtain and publish information respecting the extent and condition of forest lands in this State; to make and carry out rules and regulations for the enforcement of all laws designed to protect forests from fire and from all illegal depredations and destruction, and report the same annually to the Governor; and, as far as practicable, to give information and advice respecting the best methods of preserving wood lands and starting new plantations. He shall also, as far as practicable, procure statistics of the amount of timber cut during each year, the purposes for which it is used, and the amount of timber land thus cleared as compared with the amount of land newly brought under timber cultivation, and shall in general, adopt all such measures as in his judgment may be desirable and effective for the preservation and increase of the timber lands of this State, and shall have direct charge and control of the management of all forest lands belonging to the Commonwealth, subject to the provisions of law relative thereto. The said Secretary shall also be and hereby is charged with the administration of all laws designed to prevent fraud or adulteration in the preparation, manufacture or sale of articles of food, the inspection, sale or transportation of the agricultural products, or imitations thereof, and all laws relating to diseases of domestic animals, and to the manufacture and inspection of commercial fertilizers.

Section 4. There shall be one Deputy Secretary, who shall be appointed by the Governor for the term of four years, at a salary of three thousand dollars a year, who shall also be a Director of Farmers' Institutes. The other officers of the Department shall be appointed by the Governor for the term of four years, and shall be an Economic Zoologist, a Commissioner of Forestry,* a Dairy and Food Commissioner who shall have practical experience in the manufacture of dairy products, and State Veterinarian who shall be a graduate of some reputable veterinary college, who shall receive an annual salary of twenty-five hundred dollars each. The Dairy and Food Commissioner shall, under the direction of the Secretary, perform the duties prescribed by an act approved May twenty-sixth, one thousand eight hundred and ninety-three. The Governor is hereby authorized to appoint one chief clerk of the Department at an annual salary of sixteen hundred dollars, one stenographer at a salary of eight hundred dollars a year, and one messenger at a salary of six hundred dollars a year; and the Dairy and Food Commissioner, the Commissioner of Forestry and the Economic Zoologist shall each have a clerk, who shall be appointed by the Governor, and who shall serve under the direction of the respective commissioners aforesaid, and receive a salary of fifteen hundred dollars a year each.

Section 5. That it shall be the duty of the Superintendent of Institutes to arrange them in such manner as to time and places of

*The office of Commissioner of Forestry was taken out of the Department of Agriculture by the Act of 1901, establishing a Department of Forestry.

holding the same as to secure the greatest economy and efficiency of service, and to this end he shall, in each county where such institutes are to be held, confer and advise with the local member of the State Board of Agriculture, together with representatives duly appointed by each county agricultural, horticultural and other like organizations with reference to the appointment of speakers and other local arrangements.

Section 6. That the Secretary may, at his discretion, employ experts for special examinations or investigations, the expenses of which shall be paid by the State Treasurer in the same manner as like expenses are provided by law, but not more than five thousand dollars shall be so expended in any one year. In his annual report to the Governor, he may include so much of the reports of other organizations as he shall deem proper, which shall take the place of the present agricultural reports, and of which thirty-one thousand six hundred copies shall be published and distributed as follows:

To the Senate, nine thousand copies; to the House of Representatives, twenty thousand copies; to the Secretary of Agriculture, two thousand copies; to the State Librarian, for distribution among public libraries and for reserve work, five hundred copies, and to the State Agricultural Experiment Station, one hundred copies.

Section 7. That the Secretary of Agriculture shall have an office at the State Capitol, and it is hereby made the duty of the Commissioners of Public Buildings and Grounds to provide the necessary rooms, furniture and apparatus for the use of the Department.

Section 8. That all acts or parts of acts inconsistent herewith be and the same are hereby repealed.

Approved—March 13, 1895.

ACT PROVIDING FOR DAIRY AND FOOD COMMISSIONER.

AN ACT

To enlarge the powers of the State Board of Agriculture, to authorize the said Board to enforce the provisions of the act, entitled "An act for the protection of the public health, and to prevent adulteration of dairy products and fraud in the sale thereof," approved May twenty-one, Anno Domini one thousand eight hundred and eighty-five, and of other acts in relation to dairy products; to authorize the appointment of an agent of the said Board who shall be known as the "Dairy and Food Commissioner," and to define his duties and fix his compensation, being supplementary to an act, entitled "An act to establish a State Board of Agriculture," approved May eighth, Anno Domini one thousand eight hundred and seventy-six.

Section 1. Be it enacted, &c., That the State Board of Agriculture be and is hereby empowered and charged with the enforcement of the provisions of the act, entitled "An act for the protection of the public health, and to prevent the adulteration of dairy products and fraud in the sale thereof," approved May twenty-one, Anno Domini one thousand eight hundred and eighty-five, and with the enforcement of the various provisions of all other laws now

enacted, or hereafter to be enacted, prohibiting or regulating the adulteration or imitation of butter, cheese or other dairy products.

Section 2. That for the purpose of securing the enforcement of the provisions of the said laws concerning dairy products, the president of the said State Board of Agriculture be and hereby is authorized and empowered to appoint an agent of the said Board, who shall be known by the name and title of the "Dairy and Food Commissioner," who shall hold his office for the term of two years, or until his successor shall be duly appointed and qualified, and shall receive a salary of two thousand dollars per annum and his necessary expenses incurred in the discharge of his official duties under this act. The said agent shall be charged under the direction of the said Board with the execution and enforcement of all laws now enacted, or hereafter to be enacted, in relation to the adulteration or imitation of dairy products.

Section 3. That the said agent of the said Board, the said Dairy and Food Commissioner, is hereby authorized and empowered, subject to the approval of the said State Board of Agriculture, to appoint and fix the compensation of such assistants, agents, experts, chemists, detectives and counsel, as may be deemed by him necessary for the proper discharge of the duties of his office, and for the discovery and prosecution of violations of the said laws: Provided, That the entire expenses of the said agent and of all his assistants, agents, experts, chemists, detectives and counsel (salaries included), shall not exceed the sum appropriated for the purposes of this act.

Section 4. That the said agent of the State Board of Agriculture and such assistants, agents, experts, chemists, detectives and counsel, as he shall duly authorize for the purpose, shall have full access, egress and ingress, to all places of business, factories, farms, buildings, carriages, cars, vessels and cans, used in the manufacture, transportation and sale of any dairy products, or of any adulteration or imitation thereof. They shall also have power and authority to open any package, can or vessel, containing dairy products, or any adulteration or imitation thereof, which may be manufactured, sold or exposed for sale, in violation of any of the provisions of any act now enacted or which may be hereafter enacted in relation to dairy products, or the adulteration or imitation thereof, and they shall also have power to take from such package, can or vessel, samples for analysis.

Section 5. That all penalties and costs received by the said State Board of Agriculture for violations of the said act of May twenty-one, Anno Domini one thousand eight hundred and eighty-five, and of other acts now enacted or hereafter to be enacted, prohibiting or regulating the adulteration or imitation of butter, cheese or other dairy products, shall be appropriated by the said Board to the payment only of the necessary expenses incurred by the said Dairy and Food Commissioner and his assistants and agents in the investigation, discovery and prosecution of violations of the said act.

Section 6. That all charges, accounts and expenses of the said Commissioner, and of all the assistants, agents, experts, chemists, detectives and counsel employed by him, shall be paid by the Treasurer of the State in the same manner as other accounts and expenses of the said State Board of Agriculture are now paid as provided by law.

Section 7. That the said Commissioner shall make annual reports of his work and proceedings, and shall report in detail the number and names of the assistants, agents, experts, chemists, detectives and counsel employed by him, with their expenses and disbursements, the number of prosecutions, the number of convictions and the penalties recovered in each case, which report shall be presented to the said State Board of Agriculture at its annual meeting.

Approved—The 26th day of May, A. D. 1893.

PURE FOOD ACT, 1909.

AN ACT

Relating to food; defining food; providing for the protection of the public health, and the prevention of fraud and deception, by prohibiting the manufacture or sale, the offering for sale or exposing for sale, or the having in possession with intent to sell, of adulterated, misbranded, or deleterious foods; prescribing certain duties of the Dairy and Food Commissioner in reference thereto; and providing penalties for the violation thereof.

Section 1. Be it enacted, &c., That it shall be unlawful for any person, firm, copartnership, limited partnership, joint-stock company, or corporate body, by himself, herself, itself, or themselves, or by his, her, its, or their agents, servants, or employes, to manufacture, sell, offer for sale, expose for sale, or have in possession with intent to sell, any article of food which is adulterated or misbranded within the meaning of this act.

Section 2. That the term "Food," as used in this act, shall include not only every article used for food by man, but also every article used for, or entering into the composition of, or intended for use as an ingredient in the preparation of, food for man.

That the term "Person," as used in this act, shall include individuals, firms, copartnerships, limited partnerships, joint-stock companies, and bodies corporate, as well as all officers, agents, servants, employes, or others acting for any of the same, and shall be taken as applying in the singular or plural as the case may require.

Section 3. That for the purpose of this act, an article of food shall be deemed to be adulterated,—

First. If any substance has been mixed or packed with it, so as to reduce or lower or injuriously affect its quality, strength, or purity.

Second. If any substance has been substituted, wholly or in part, for the article.

Third. If any valuable constituent of the article has been, wholly or in part, abstracted.

Fourth. If it be mixed, colored or changed in color, coated, polished, powdered, stained, or bleached, whereby damage or inferiority is concealed, or so as to deceive or mislead the purchaser; or if by any means, it is made to appear better or of greater value than it is.

Fifth. If it contains any added sulphurous acid, sulphur dioxide, or sulphites, benzoate acid or benzoates, except as hereafter pro-

vided; or if it contains any added boric acid or borates, salicylic acid or salicylates, formaldehyde, hydrofluoric acid or fluorides, fluoborates, fluosilicates, or other fluorine compounds, dulcin, glucin, saccharin, alum, compounds of copper, bethanaphthol, hydronaphthol, ab-rastol, asaprol, oxides of nitrogen, nitrous acid or nitrites, pyroligneous acid, or other added ingredients deleterious to health; or if, in the case of confectionery, it contains any of the substances mentioned in this paragraph, or any mineral substance, or injurious color or flavor, alcoholic liquor, or any other ingredients, not herein mentioned, deleterious to health: Providing, That this act shall not be construed to prohibit the use of harmless colors of any kind, in confectionery, when used for coloring, and not for any fraudulent purpose: And provided further, That nothing in this act shall be construed to prohibit the use of common salt, sugar, pure corn syrup, pure glucose, wine vinegar, cider vinegar, malt vinegar, sugar vinegar, glucose vinegar, distilled vinegar, spices or their essential oils, alcohol (except in confectionery), edible oils, edible fats, wood smoke applied directly as generated, or proper refrigeration: And provided further, That in the manufacture of confectionery the use of alcohol shall be permitted as it may be found in customary alcoholic tinctures or extracts used for flavoring purposes only, and as a solvent for glazes, and that oil of sweet birch, or methyl-salicylic ester, may be used as a substitute for oil of wintergreen as a flavor: And provided further, That in the preparation of dried fruits and molasses, sulphur dioxide, either free or in simple combination, may be used in such quantities as will not render said dried fruits or molasses deleterious to health; and that sodium benzoate may be used in the preparation of those articles of food in which it has heretofore been generally used, in quantities not exceeding one-tenth (1-10) of one per centum, or benzoic acid, equivalent thereto: And provided further, That when any quantity of sodium benzoate is used in any article of food, or any quantity of sulphur dioxide is used in the preparation of dried fruits or molasses, the fact that sodium benzoates or sulphur dioxide has been used in the preparation thereof shall be plainly stated on each package of such food.

Sixth. If it consists of, or is manufactured in whole or in part from, a diseased, contaminated, filthy, or decomposed substance, either animal or vegetable; or an animal or vegetable substance produced, stored, transported, or kept in a way or manner that would render the article diseased, contaminated, or unwholesome; or if it is any part of the product of a diseased animal, or the product of an animal that has died otherwise than by slaughter.

Section 4. That for the purpose of this act, an article shall be deemed to be misbranded,—

First. If it be an imitation of, or offered for sale under, the name of another article.

Second. If it be labeled or branded so that it may deceive or mislead the purchaser; or purport to be a foreign product, when not so; or if the contents of the package as originally put up shall have been removed, in whole or in part, and other inferior contents shall have been placed in such package.

Third. If the package containing it, or its label, shall bear any statement, design, or device, regarding the substances or ingredients

contained therein, which statement, design, or device shall be false or misleading in any particular.

Fourth. If it be a mixture or compound which may be known, or from time to time hereafter known, as an article of food, unless it be accompanied on the label or brand with a statement that it is a mixture or compound and a statement of the substance entering into said mixture or compound. All labeling of packages required by this act shall be on the main label of each package, and in type not less than eight point, bavier caps, in size,—unless the size of the package will not permit the use of eight-point cap type, in which case the size of the type may be reduced proportionately,—and in such position and terms as may be plainly seen and read by the purchaser: Provided, That nothing in this act shall be construed as required or compelling the proprietors, manufacturers, or sellers of proprietary foods to disclose their trade formulas, except in so far as may be necessary under the provisions of this act to avoid adulteration, imitation, or misbranding.

Section 5. When the Dairy and Food Commissioner, or his agent, shall obtain an article of food, or a sample or portion thereof, from any person, for the purpose of determining whether the same is adulterated or misbranded within the meaning of this act, and it shall be found that the said article of food is adulterated or misbranded within the meaning of this act, then the Dairy and Food Commissioner shall proceed against the said person, from whose store, warehouse, or other place of business said article, sample, or portion thereof, shall have been obtained, for a violation of the provisions of this act.

But no prosecution shall be sustained, under the provisions of this act, against a retail dealer for the selling, offering for sale, exposing for sale, or having in possession with intent to sell, of any adulterated or misbranded article of food, as defined herein, if the retail dealer from whom the said article of food, sample, or portion thereof, was obtained by the Dairy and Food Commissioner or his agent, can establish a guaranty, signed by the manufacturer or wholesale dealer, or jobber or distributor, residing in the United States, from whom such article of food was purchased or procured, to the effect that the same is not adulterated or misbranded within the meaning of this act designating it.

Said guaranty to afford protection shall contain the name and address of the manufacturer or wholesale dealer, or jobber or distributor, making the sale of such article of food to such retailer, and in such case the said manufacturer or wholesale dealer, or jobber or distributor, so as aforesaid giving such guaranty, shall be amenable to the prosecution, fines and other penalties which would attach, in due course, to the retailer holding such guaranty under the provisions of this act, for a violation hereof; and every manufacturer or wholesale dealer, or jobber or distributor, giving a guaranty under the provisions of this act shall be held responsible, and shall be proceeded against for the adulteration or misbranding of any article of food sold under said guaranty, and shall be subject to the penalties for the violation of the provisions of this act. No such guaranty shall operate as a defense to prosecution for a violation of the provisions of this act, if the retailer holding such guaranty shall continue to sell the same article of food after written or

printed notice from the Dairy and Food Commissioner, or his agent, that such article is adulterated or misbranded within the meaning of this act.

But if said person shall violate the provisions of paragraph six, section three of this act, by having stored or transported or kept said article, in said paragraph mentioned, in a way or manner to render it diseased, contaminated, or unwholesome, said person shall be proceeded against for a violation of the provisions of this act; and it shall not be necessary for conviction that any article, sample, or portion thereof, shall be obtained by the Dairy and Food Commissioner, or his agent, as a condition precedent to prosecution.

Section 6. For the purpose of this act, an article shall be deemed to be the same article,—

First. When it shall be of the same brand, or have thereon the same label, and shall be adulterated or misbranded in the same way.

Second. When it is not labeled or branded, but is sold, offered for sale, or exposed for sale under the same name, and adulterated or misbranded in the same way.

Third. When, although sold, offered for sale, or exposed for sale under another name, or labeled or branded in a different way, it shall be found to be the product of the same manufacturer, grower, or maker, and to be adulterated or misbranded in the same way: Provided, however, That an article shall be deemed to be adulterated in the same way it shall contain the same adulterant substance or substances.

Section 7. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than sixty dollars nor more than one hundred dollars.

Section 8. The Dairy and Food Commissioner of the State shall be charged with the enforcement of the provisions of this act and shall make rules and regulations for the proper enforcement thereof, and shall cause such rules and regulations to be published in the official bulletin in the issue immediately following the preparation of the same.

Section 9. All fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner or his agent, and by the Dairy and Food Commissioner be paid into the State Treasury, for the use of the Commonwealth.

Section 10. The following acts of Assembly; namely,—An act, entitled “An act to provide against the adulteration of food, and providing for the enforcement thereof,” approved the twenty-sixth day of June, Anno Domini one thousand eight hundred and ninety-five:

And an act, entitled “An act for the protection of public health, by prohibiting the manufacture and sale, offering for sale, or having in possession with intent to sell, within the State, of adulterated, misbranded, poisonous, or deleterious foods and confections; regulating the enforcement of the provisions hereof; providing for the protection of persons buying and selling adulterated or misbranded foods and confections under a guaranty; and providing penalties

for the violation thereof," approved the first day of June, Anno Domini one thousand nine hundred and seven,—be and the same are hereby repealed.

Provided, nevertheless, That this act shall not apply to, nor in any way affect,—

An act entitled "An act to prohibit the adulteration or coloring of milk and cream by the addition of so-called preservatives or coloring matter, and to provide for the enforcement of the same," approved the tenth day of June, Anno Domini one thousand eight hundred and ninety-seven:

And the amendment thereto, approved the nineteenth day of April, Anno Domini one thousand nine hundred and one, entitled "An act to amend the first section of an act, entitled 'An act to prohibit the adulteration or coloring of milk and cream by the addition of so-called preservatives or coloring matter, and to provide for the enforcement of the same,'" approved the tenth day of June, Anno Domini one thousand eight hundred and ninety-seven;

Nor the act, entitled "An act to prohibit the manufacture and sale of oleomargarine, butterine, and other similar products, when colored in imitation of yellow butter; to provide for license fees to be paid by manufacturers, wholesale and retail dealers, and by proprietors of hotels, restaurants, dining-rooms and boarding-houses, for the manufacture and sale of oleomargarine, butterine, or other similar products, not colored in imitation of yellow butter; and to regulate the manufacture and sale of oleomargarine, butterine, or other similar products, not colored in imitation of yellow butter, and prevent and punish fraud and deception in such manufacture and sale as an imitation butter; and to prescribe penalties and punishment for violations of this act, and the means and the method of procedure for its enforcement, and regulate certain matters of evidence in such procedure," approved the twenty-ninth day of May, Anno Domini one thousand nine hundred and one;

Nor the act, entitled, "An act defining boiled or process butter; designating the name by which it shall be known; providing for the licensing of manufacturers and dealers therein, and regulating the sale and labeling of the same so as to prevent fraud and deception in its sale; providing punishment for violations of this act, the methods of procedure for its enforcement, and certain matters of evidence in such procedure," approved the tenth day of July, Anno Domini one thousand nine hundred and one;

Nor the act, entitled "An act to prohibit the selling, shipping, consigning, offering for sale, exposing for sale, or having in possession with intent to sell, as fresh, any meat, poultry, game, fish or shell-fish which contains any substance or article possessing a preservative or coloring character or action; making the same a misdemeanor, and to prescribe penalties and punishment for violations, and the means and the methods of procedure for the enforcement thereof," approved the twenty-eighth day of March, Anno Domini one thousand nine hundred and five:

Nor the act, entitled "An act providing for the regulation of the manufacture and sale of distilled and fermented vinegars; prescribing their standard to prevent the adulteration of the same, providing for the enforcement thereof, and punishment for the violation of the same," approved the eighteenth day of June, Anno Domini one thousand eight hundred and ninety-seven;

Nor the amendment thereto approved the twenty-first day of May, Anno Domini one thousand nine hundred and one, entitled "An act to amend the first and second sections of an act, entitled 'An act providing for the regulation of the manufacture and sale of distilled and fermented vinegars; prescribing their standard to prevent the adulteration of the same; providing for the enforcement thereof, and the punishment for the violation of the same,' approved the eighteenth day of June, Anno Domini one thousand eight hundred and ninety-seven, so as to provide that vinegar made wholly from grapes, apples, or other fruits shall not be required to contain an acidity of four per centum."

Nor the act, entitled "An act to prevent fraud and deception in the manufacture and sale of cheese, and defining what shall constitute the various grades of cheese; providing rules and regulations for marking and branding the same; providing for the enforcement of this act; prescribing penalties for its violation," approved the twenty-third day of June, Anno Domini one thousand eight hundred and ninety-seven;

And the amendment thereto, approved the second day of May, Anno Domini one thousand nine hundred and one, entitled "An act to amend section two of an act entitled 'An act to prevent fraud and deception in the manufacture and sale of cheese, and defining what shall constitute the various grades of cheese; providing rules and regulations for marking and branding the same; providing for the enforcement of this act; prescribing penalties for its violation,' approved the twenty-third day of June, Anno Domini one thousand eight hundred and ninety-seven;"

Nor the act, entitled "An act regulating the manufacture or sale of fruit syrups; providing for the enforcement thereof; and to repeal an act, entitled 'An act relative to adulteration of natural fruit juice, and providing penalties for violations thereof,' approved the second day of May, Anno Domini one thousand nine hundred and one," approved the twenty-sixth day of April, Anno Domini one thousand nine hundred and five:—

All of which acts shall remain in full force.

Approved—The 13th day of May, A. D. 1909.

MILK AND CREAM ACT.

AN ACT

Relating to milk; providing for the protection of the public health, and the prevention of fraud and deception, by regulating the sale of milk, skimmed milk, and cream; providing penalties for the violation thereof, and providing for the enforcement thereof.

Section 1. Be it enacted, &c., That it shall be unlawful for any person, firm, or corporate body, by himself, herself, itself or themselves, or by his, her, its or their agents, servants or employes to sell, offer for sale, expose for sale, or have in possession with intent to sell, milk which contains any added water, or milk which has

had the butter-fat, or any portion thereof removed therefrom; Provided, however, That skimmed milk, when clean and wholesome, may be sold, if sold as skimmed milk: And provided, further, That no cream shall be sold as cream if it contains less than fifteen (15) per centum butter fat.

Section 2. That any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than twenty (20) dollars, nor more than fifty (50) dollars.

Section 3. That the Dairy and Food Commissioner shall be charged with the enforcement of the provisions of this act.

Section 4. That all fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner or his agent, and, when so collected and paid, shall thereafter be, by the Dairy and Food Commissioner, paid into the State Treasury for the use of the Commonwealth.

Section 5. This act shall not apply to, nor in any way affect, the act entitled "An act to prohibit the adulteration or coloring of milk and cream by the addition of so-called preservatives or coloring matter, and to provide for the enforcement of the same," approved the tenth day of June, Anno Domini one thousand eight hundred and ninety-seven; and the amendment thereto, approved the nineteenth day of April, Anno Domini one thousand nine hundred and one, entitled "An act to amend the first section of an act, entitled 'An act to prohibit the adulteration or coloring of milk and cream by the addition of so-called preservatives or coloring matter, and to provide for the enforcement of the same,' approved the tenth day of June, Anno Domini one thousand eight hundred and ninety-seven,"—which act shall remain in full force.

But all other acts, or parts of acts, inconsistent with the provisions of this act, be and the same are hereby repealed.

Approved—The 24th day of March, A. D. 1909.

NON-ALCOHOLIC DRINKS ACT.

AN ACT

Relating to non-alcoholic drinks; defining the same; and prohibiting the manufacture, sale, offering for sale, exposing for sale, or having in possession with intent to sell, of any adulterated or misbranded non-alcoholic drinks; and providing penalties for the violation thereof, and providing for the enforcement thereof.

Section 1. Be it enacted, &c., That it shall be unlawful for any person, firm, or corporate body, by himself, herself, itself or themselves, or by his, her, its or their agents, servants, or employes, to manufacture, sell, offer for sale, expose for sale, or have in possession with intent to sell, any article of non-alcoholic drink which is adulterated or misbranded, within the meaning of this act.

Section 2. That the term "non-alcoholic drink," as used herein, shall include carbonated beverages of all flavors, sarsaparilla, ginger ale, soda water of all flavors, lemonade, orangeade, root beer, grape juice, and all other non-intoxicating drinks.

Section 3. A non-alcoholic drink shall be deemed to be adulterated, within the meaning of this act, if it contains any added boric acid or borates, salicylic acid or salicylates, formaldehyde, sulphurous acid or sulphites, hydrofluoric acid or fluorides, fluoborates, fluosilicates, or other fluorine compounds, dulcin, glucin, saccharin, betanaphthol, hydronaphthol, abrastol, asaprol, oxides of nitrogen, nitrous acid or nitrates, compounds of copper, pyroligneous acid, or other added substance deleterious to health.

Section 4. That, for the purpose of this act, a non-alcoholic drink shall be deemed to be misbranded,—

First. If it be an imitation of, or offered for sale under, the distinctive name of another article, or if it is colored or flavored in imitation of the genuine color or flavor of another substance.

Second. If it be labeled or branded or tagged so as to deceive or mislead the purchaser.

Third. If the bottle or receptacle containing it, or its label, shall bear any statement, design, or device, regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular: Provided, That any non-alcoholic drink which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded under the following conditions:—

A. In the case of mixtures or compounds which may be now, or from time to time hereafter, known as non-alcoholic beverages under their own distinctive names, and not an imitation of, or offered for sale under, the name of another article.

B. In the case of non-alcoholic beverages which are labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word "Compound," "Imitation," or "Blend," as the case may be, is plainly stated on the container in which it is offered for sale: Provided, That the term "blend," as used herein, shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients not prohibited by this act, and used for the purpose of coloring or flavoring only.

Section 5. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than twenty-five (\$25) dollars, nor more than one hundred (\$100) dollars.

Section 6. The Dairy and Food Commissioner shall be charged with the enforcement of the provisions of this act.

Section 7. All fines and penalties imposed and recovered for any violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner or his agent, and, when so collected and paid, shall thereafter be, by the Dairy and Food Commissioner, paid into the State Treasury, for the use of the Commonwealth.

Section 8. This act shall not apply to, nor in any way affect, the act, entitled "An act to prohibit the adulteration or coloring of milk or cream by the addition of so-called preservatives or coloring matter, and to provide for the enforcement of the same," approved the

tenth day of June, Anno Domini one thousand eight hundred and ninety-seven; and the amendments thereto, approved the nineteenth day of April, Anno Domini one thousand nine hundred and one, entitled "An act to amend the first section of an act, entitled 'An act to prohibit the adulteration or coloring of milk and cream by the addition of so-called preservatives or coloring matter, and to provide for the enforcement of the same,' approved the tenth day of June, Anno Domini one thousand eight hundred and ninety-seven;" nor the act, entitled "An act regulating the manufacture or sale of fruit-syrups, providing for the enforcement thereof, and to repeal an act, entitled 'An act relative to adulteration of natural fruit juice, and providing penalties for the violations thereof,' approved the second day of May, Anno Domini one thousand nine hundred and one," approved the twenty-sixth day of April, Anno Domini one thousand nine hundred and five,— which acts shall remain in full force.

Approved—The 11th day of March, A. D. 1909.

ICE CREAM ACT.

AN ACT

For the protection of the public health; and to prevent fraud and deception in the manufacture, sale, offering for sale, exposing for sale, and having in possession with intent to sell, of adulterated or deleterious ice cream; fixing a standard of butter-fat for ice cream; providing penalties for the violation thereof, and providing for the enforcement thereof.

Section 1. Be it enacted, &c., That no person, firm, or corporate body, by himself, herself, itself or themselves, or by his, her or their agents, servants, or employes, shall sell, offer for sale, expose for sale, or have in possession with intent to sell, ice-cream adulterated within the meaning of this act.

Section 2. Ice-cream shall be deemed to be adulterated, within the meaning of this act,—

First. If it shall contain boric acid, formaldehyde, saccharin, or any other added substance or compound that is deleterious to health.

Second. If it shall contain salts of copper, iron oxide ochres, or any coloring substance deleterious to health: Provided, That this paragraph shall not be construed to prohibit the use of harmless coloring matter in ice-cream, when not used for fraudulent purposes.

Third. If it shall contain any deleterious flavoring matter, or flavoring matter not true to name.

Fourth. If it be an imitation of, or offered for sale under, the name of another article.

Section 3. Nothing in this act shall be construed to prohibit the use of fresh eggs, and not exceeding one-half of one per centum of pure gelatin, gum tragacanth, or other vegetable gums.

Section 4. No ice-cream shall be sold within the State containing less than eight (8) per centum butter-fat, except where fruit or nuts are used for the purpose of flavoring, when it shall not contain less than six (6) per centum butter-fat.

Section 5. It shall not be lawful for any person, firm or corporate body to sell, offer for sale, expose for sale, or have in possession with intent to sell, any ice-cream in any container which is falsely labeled or branded as to the name of the manufacturer thereof; or to misrepresent, in any way, the place of manufacture of ice-cream or the manufacture thereof.

Section 6. Any person, firm, or corporate body who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than twenty-five (25) dollars, nor more than fifty (50) dollars.

Section 7. The Dairy and Food Commissioner shall be charged with the enforcement of the provisions of this act.

Section 8. All fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner or his agent, and, when so collected and paid, shall thereafter be, by the Dairy and Food Commissioner, paid into the State Treasury for the use of the Commonwealth.

Approved—The 24th day of March, A. D. 1909.

FRESH EGGS ACT.

AN ACT

For the protection of the public health, by prohibiting the sale, offering for sale, exposing for sale, or having in possession with intent to sell, of eggs unfit for food, as therein defined, and prohibiting the use of such eggs in the preparation of food products; providing penalties for the violation thereof, and providing for the enforcement thereof.

Section 1. Be it enacted, &c., That it shall be unlawful for any person, firm, or corporate body, by himself, herself, itself or themselves, or by his, her, its or their agents, servants or employes, to sell, offer for sale, expose for sale, or have in possession with intent to sell, eggs that are unfit for food, within the meaning of this act.

Section 2. This act shall apply to eggs that, either before or after removal from the shell, are wholly or partly decayed or decomposed, and to eggs in the fluid state, any portion of which are wholly or partly decayed or decomposed, or that are mixed with parts of eggs that are derived from eggs that are wholly or partly decayed or decomposed. This act shall also apply to frozen masses or broken eggs, if the mass contains eggs that are wholly or partly decayed or decomposed, or that are mixed with parts of eggs that have been taken from eggs that were wholly or partly decayed or decomposed.

Section 3. That it shall be unlawful for any person, firm, or corporate body, by himself, herself, itself or themselves, or by his, her, its or their agents, servants, or employes, to use eggs that are either wholly or partly decayed or decomposed, in the preparation of food

products: And provided further, That there shall be no delivery, sale, purchase, or acceptance of wholly or partly decayed or decomposed eggs in or at any establishment where food products are prepared or manufactured.

Section 4. That any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than two hundred (\$200) dollars, nor more than one thousand (\$1,000) dollars, or to undergo an imprisonment of not less than three (3) months, nor more than nine (9) months, or both or either, at the discretion of the court.

Section 5. That the Dairy and Food Commissioner shall be charged with the enforcement of the provisions of this act.

Section 6. That all fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner, or his agent, and, when so collected and paid, shall thereafter be, by the Dairy and Food Commissioner, paid into the State Treasury, for the use of the Commonwealth.

Approved—The 11th day of March, A. D. 1909.

LARD ACT.

AN ACT

To protect the public health, and prevent fraud and deception in the manufacture or sale of lard, lard substitutes, imitation lard, and lard compounds; providing penalties for the violation thereof, and providing for the enforcement thereof.

Section 1. Be it enacted, &c., That no person, firm, or corporate body, by himself, itself or themselves, or by his, her, its or their agents, servants or employes, shall, within the State, manufacture, sell, offer for sale, expose for sale, or have in possession with intent to sell, lard which contains any ingredients other than the pure fat of swine, except as hereinafter provided.

Section 2. Imitation lard and lard substitutes, not containing any lard, may be made and sold, when offered for sale and sold under the distinctive trade-name thereof: Provided, however, That if said imitation lard or lard substitute is offered for sale or sold from a broken package, then the vessel, receptacle, or wrapper receiving the same, at the time of every sale, shall be plainly labeled or marked on the outside thereof, in letters at least one-half inch in length and plainly exposed to view, with the words "Imitation Lard" or "Lard Substitute," or the distinctive trade-name of the said article or substance: And provided further, That the said imitation lard or lard substitute shall not be composed of, or contain any article, substance, or ingredient deleterious to health.

Compounds composed of not less than fifty (50) per centum of pure lard, and other substance or substances not deleterious to

health, may be made and sold, if the vessel, receptacle, or other wrapper receiving the same at the time of every sale thereof, is plainly marked or labeled on the outside thereof, in letters at least one-half inch in length and plainly exposed to view, with the words "Compound Lard."

Section 3. Any person, firm, or corporate body who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than fifty (\$50) dollars, nor more than one hundred (\$100) dollars.

Section 4. The Dairy and Food Commissioner shall be charged with the enforcement of the provisions of this act.

Section 5. All fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner or his agent, and, when so collected and paid, shall thereafter be, by the Dairy and Food Commissioner, paid into the State Treasury, for the use of the Commonwealth.

Section 6. All acts or parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

Approved—The 11th day of March, A. D. 1909.

ADULTERATION OR COLORING OF MILK AND CREAM.

AN ACT

To prohibit the adulteration or coloring of milk and cream by the addition of so-called preservatives or coloring matter, and to provide for the enforcement of the same.

Section 1. Be it enacted, &c., That if any person, firm, or corporate body, by himself, herself, or themselves, or by his, her or their agents or servants, shall offer for sale, expose for sale, sell, or have in possession with intent to sell, for human consumption, milk or cream to which has been added boracic acid salt, boracic acid, salicylic acid, salicylate of soda, formaline, formaldehyde, sodium fluoride, sodium benzoate, or any other compound or substance for the purpose of preserving or coloring the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof in the court of quarter sessions of the proper county, shall be sentenced to pay a fine of not less than fifty nor more than one hundred dollars, or to undergo an imprisonment not exceeding sixty days, or both, at the discretion of the court.—Amendment of 19th of April, 1901.

Section 2. The agent of the Department of Agriculture, known as the Dairy and Food Commissioner, shall be charged with the enforcement of all the provisions of this act, and shall have all the power to enforce this act that is given him to enforce the provisions of the act by which he receives his appointment.

Section 3. All penalties and costs for the violation of the provisions of this act shall be paid to the Dairy and Food Commis-

sioner or his agent, and by him paid into the State Treasury, to be kept as a fund, separate and apart, for the use of the Department of Agriculture for the enforcement of this act, and to be drawn out upon the warrant signed by the Secretary of Agriculture and the Auditor General.

Section 4. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

Approved—The 10th day of June, 1897.

VINEGAR ACT.

AN ACT

Providing for the regulation of the manufacture and sale of distilled and fermented vinegars, prescribing their standard, to prevent the adulteration of the same, providing for the enforcement thereof, and punishment for the violation of the same.

Section 1. Be it enacted, &c., That from and after the passage of this act no person, firm or corporate body shall manufacture for sale, offer for sale or expose for sale, sell or deliver, or have in his, her or their possession with intent to sell or deliver, any vinegar not in compliance with the provisions of this act. No vinegar shall be sold or exposed for sale as apple or cider vinegar which is not the legitimate product of pure apple juice, or vinegar not made exclusively of said apple cider, or vinegar in which foreign substances, drugs or acids shall have been introduced, as may appear upon proper test; no vinegar shall be branded fruit vinegar unless the same be made wholly from grapes, apples or other fruits.—Amendment of May 21, 1901.

Section 2. All vinegar made by fermentation and oxidation without the intervention of distillation, shall be branded "fermented vinegar," with the name of the fruit or substance from which the same is made. And all vinegar made wholly or in part from distilled liquor shall be branded as "distilled vinegar," and all such distilled vinegar shall be free from coloring matter, added before, during or after distillation, and from color other than that imparted to it by the process of distillation, and shall contain not less than four per centum, by weight, of absolute acetic acid. And all vinegar shall be made wholly from the fruit or grain from which it is represented to be made, and shall contain no foreign substance; Provided, That this shall not be construed to prohibit the use of such an amount of spices as are necessary for flavoring, provided such spices do not color the vinegar.—Amendment of 21st May, 1901.

Section 3. No person, firm or corporate body shall manufacture for sale, offer for sale, or have in his, her or their possession with intent to sell or expose for sale, any vinegar found upon proper test to contain any preparation of lead, copper, sulphuric or other mineral acid, or other ingredients injurious to health. And all packages containing vinegar shall be plainly and distinctly marked on each head of the cask, barrel or keg containing such vinegar, or if sold in

other packages, each package shall be plainly and distinctly marked with the name and residence of the manufacturer, together with the brand required in section two thereof.

Section 4. Every person, firm or corporate body who shall violate any of the provisions of this act shall, for every such offense, forfeit and pay not less than fifty dollars nor more than one hundred dollars, which shall be recoverable, with costs, including expense of inspection and analysis, by any person suing in the name of the Commonwealth as debts of like amount are by law recoverable: Provided, That the Department of Agriculture, through its officer known as the Dairy and Food Commissioner, together with the deputies, agents and assistants, shall be charged with the enforcement of this act, and shall have full access to all places of business, factories, mills, buildings, carriages, cars, vessels, barrels, tanks and packages of whatever kind used in the manufacture and transportation and sale of any vinegar, or of any adulteration or imitation thereof, or any package in which vinegar is mixed with articles of food. They shall also have power and authority to open any package, barrel or vessel containing any vinegar, or any adulteration or imitation thereof, which may be manufactured, sold or exposed for sale, and they shall also have full power and authority to take the samples therefrom for analysis upon tendering the value of said samples. And all charges, accounts and expenses of the Department for the enforcement of this act, through the said Commissioner and his deputies, agents, assistants, chemists, and counsel employed by him, in carrying out the provisions of this act, shall be paid by the Treasurer of the State in the same manner as other accounts and expenses of the said Department are paid. And all penalties and costs for the violation of the provisions of this act shall be paid to the said Dairy and Food Commissioner, or his agents, and by him immediately covered into the State Treasury, to be kept as a fund for the use of the Department, and to be drawn out upon the warrant signed by the Secretary of Agriculture and the Auditor General.

Section 5. Every person who violates any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars, nor more than one hundred dollars, or by imprisonment in the county jail for not less than ten nor more than thirty days, or both fine and imprisonment for the first offense, and a fine of one hundred dollars and imprisonment for thirty days for every subsequent offense: Provided, That all fines and costs, including the expense of inspection and analysis imposed under this section, shall be covered into the State Treasury as provided by section four of this act, and all vinegar sold or offered for sale in violation of the provisions of this act shall be subject to forfeiture and spoliation.

Section 6. Magistrates and justices of the peace throughout this Commonwealth shall have jurisdiction to hear and determine actions arising for violations of the provisions of this act, and to hold for court, or impose the penalties provided therein, subject to appeal as the law shall direct.

Section 7. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

Approved—The 18th day of June, A. D. 1897.

CHEESE ACT.

AN ACT

To prevent fraud and deception in the manufacture and sale of cheese, and defining what shall constitute the various grades of cheese, providing rules and regulations for marking and branding the same, providing for the enforcement of this act, prescribing penalties for its violation.

Section 1. Be it enacted, &c., That no person, firm or corporate body shall manufacture, sell, or offer for sale or have in his or their possession with intent to sell, any cheese not the legitimate product of pure, unadulterated milk or cream, or any cheese into which any foreign fats or substances have been introduced as may appear upon proper test.

Section 2. All cheese manufactured or sold within this Commonwealth shall be divided into five grades, and shall be branded or stenciled in ordinary bold-faced capital letters, not less than one-half inch in height, on one side of each cheese, and upon one side of the box or case containing the cheese, the manufacturer's name and postoffice address, and the words "Full Cream," "Three-fourths Cream," "One-half Cream," "One-fourth Cream" and "Skimmed Cheese." All cheese branded "Full Cream," shall contain not less than thirty-two per centum of butter fat, as may appear upon proper test. All cheese branded "Three-Fourth Cream" shall contain not less than twenty-four per centum of butter fat, as may appear upon proper test. All cheese branded "One-Fourth Cream" shall contain not less than sixteen per centum of butter fat, as may appear upon proper test. All cheese branded "One-Fourth Cream" shall contain not less than eight per centum of butter fat, as may appear upon proper test. All cheese containing less than eight per centum of butter fat, as may appear upon proper test, shall be branded "Skimmed Cheese." Provided, however, That all full cream cheese sold, shipped or consigned to dealers outside of the Commonwealth of Pennsylvania may be branded, or stenciled, or not, as required by this act, at the option of the manufacturer.—Amendment of May 2, 1901.

Section 3. Every person, firm or corporation who shall violate any of the provisions of this act shall, for every such offense, forfeit and pay the sum of not less than fifty dollars, nor more than one hundred dollars, together with all charges and expenses for inspection and analysis connected therewith, by any person suing therefor in the name of the Commonwealth, as debts of like amount are by law recoverable; and justices of the peace and aldermen throughout this Commonwealth shall have jurisdiction to hear and determine all actions arising under the provisions of this act, and all cheese not in accordance with this act shall be subject to forfeiture and spoliation: Provided, That the Department of Agriculture, through its officer, known as the Dairy and Food Commissioner, together with his deputies, agents and assistants, shall be charged with the enforcement of the provisions of this act, and shall have authority to enter any building or factory where the same is sold or manufactured or exposed for sale, and shall have the right to

take samples sufficient for analysis, upon tendering the value thereof. All fines and penalties, including also all charges for inspection and analysis, shall be paid to the Dairy and Food Commissioner, his deputies, agents or assistants, and by him immediately covered into the State Treasury, and so much of said fund as may be necessary for the enforcement of this act shall be drawn out upon warrants signed by the Secretary of Agriculture and Auditor General: Provided, That the provisions of this act shall not be construed to apply to such cheese as is known as "fancy" cheese and is under five pounds in weight, each; or to what is known as cottage cheese or pot cheese, and do not contain anything injurious to health.

Section 4. This act shall take effect sixty days after its approval by the Governor of the Commonwealth.

Approved—The 23d day of June, A. D. 1897.

FRUIT SYRUP ACT.

AN ACT

Regulating the manufacture or sale of fruit-syrups, providing for the enforcement thereof, and to repeal an act, entitled "An act relative to adulteration of natural fruit juice, and providing penalties for violations thereof," approved the second day of May, Anno Domini one thousand nine hundred and one.

Section 1. Be it enacted, &c., That any person, firm, or corporate body who shall, by himself, herself or themselves, or by his, her or their agents or servants, manufacture, sell, ship, consign, offer for sale or expose for sale, or have in possession with intent to sell, any fruit-syrup which contains formaldehyde, sulphurous acid or sulphites, boric acid or borates, salicylic acid or salicylates, saccharin, dulcin, glucin, betanaphthol, abrastol, asaprol, fluorides, fluoborates, fluosilicates or other fluorine compounds; also any coal tar dyes, sulphate of copper, or any other coloring matter injurious to health, or any preservatives or their compounds injurious to health, shall be deemed guilty of a misdemeanor.

Section 2. Every person, firm or corporation, and every officer, agent, servant or employe of such person, firm or corporation, who violates any of the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction thereof in the court of quarter sessions of the proper county, shall be sentenced to pay a fine of not less than sixty nor more than one hundred dollars, with the costs, or to undergo an imprisonment not exceeding sixty days, or both, at the discretion of the court.

Section 3. It shall be the duty of the Dairy and Food Commissioner to enforce the provisions of this act, for which purpose he shall have the same power which is given to enforce the provisions of the act authorizing his appointment.

Section 4. All penalties or fines which may be recovered in any proceeding to enforce the provisions of this act shall be paid to the Dairy and Food Commissioner, or his agent, and by him paid into the State Treasury for the use of the Commonwealth.

Section 5. The act, entitled "An act relative to adulteration of natural fruit juice, and providing penalties for violations thereof," approved the second day of May, Anno Domini one thousand nine hundred and one, be and the same is hereby repealed.

Approved—The 26th day of April, A. D. 1905.

OLEOMARGARINE ACT.

AN ACT

To prohibit the manufacture and sale of oleomargarine, butterine, and other similar products, when colored in imitation of yellow butter; to provide for license fees to be paid by manufacturers, wholesale and retail dealers, and by proprietors of hotels, restaurants, dining rooms and boarding houses: for the manufacture and sale of oleomargarine, butterine, or other similar products, not colored in imitation of yellow butter; and to regulate the manufacture and sale of oleomargarine, butterine or other similar products, not colored in imitation of yellow butter, and prevent and punish fraud and deception in such manufacture and sale as an imitation butter; and to prescribe penalties and punishment for violations of this act, and the means and the method of procedure for its enforcement, and regulate certain matters of evidence in such procedure.

Section 1. Be it enacted, &c., That no person, firm, or corporation shall, by himself, herself or themselves, or by his, her or their agent or servant, nor shall any officer, agent, servant or employe of any person, firm or corporation, manufacture, sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell, oleomargarine, butterine, or any similar substance, article, product or compound, made wholly or partly out of any fats, oils or oleaginous substance, or compound thereof, not produced from pure, unadulterated milk, or cream from the same, without the admixture or addition of any fats foreign to the said milk or cream, and which shall be in imitation of yellow butter, produced from pure, unadulterated milk, or cream of the same, with or without coloring matter, unless such person, firm or corporation shall have first obtained a license and paid a license fee, as hereinafter provided; nor unless the said article, product or compound, so manufactured, shipped, consigned, offered for sale, exposed for sale, or had in possession with intent to sell, shall be made and kept free from all coloration or ingredients causing it to look like yellow butter; nor unless the same shall be kept and presented in a separate and distinct form, and in such manner as will advise the purchaser and consumer of its real character; nor unless such person, firm or corporation shall in all other respects comply with and observe the provisions of this act.

Section 2. Every person, firm or corporation, and every agent of such person, firm or corporation, desiring to manufacture, sell or offer, or expose for sale, or have in possession with intent to

sell, oleomargarine, butterinè, or any similar substance, not made or colored in imitation of yellow butter, shall make application for a license so to do, in such form as shall be prescribed by the Department of Agriculture through its agent, the Dairy and Food Commissioner; which application, in addition to other matters which may be required to be stated therein by said Dairy and Food Commissioner, shall contain an accurate description of the place where the proposed business is intended to be carried on, and the name and style under which it is proposed to conduct the said business. If the said application is satisfactory to the said Dairy and Food Commissioner, and said name and style shall not, in the judgment of the Dairy and Food Commissioner, be calculated to deceive or mislead the public as to the real nature of the business so proposed to be carried on, he shall issue to the applicant or applicants a license, authorizing him, her or them to engage in the manufacture or sale of oleomargarine, or butterine, or any similar substance, which shall not contain any coloration or ingredient that causes it to resemble or be in imitation of yellow butter; for which said license the applicant or applicants shall first pay: if a manufacturer, the annual sum of one thousand dollars; if a wholesaler, the annual sum of five hundred dollars; and if a retailer, the annual sum of one hundred dollars; if a proprietor of a hotel, restaurant or dining room, the annual sum of fifty dollars; and if a proprietor of a boarding house, the annual sum of ten dollars; and the said license fee, when received by the Dairy and Food Commissioner or his agent, shall be by him immediately covered into the State Treasury. Such licenses shall not authorize the manufacture or sale, exposing for sale, or having in possession with intent to sell, oleomargarine, butterine or any similar substance, at any other place than that designated in the application and license; and the said license shall not authorize the manufacture, sale, exposing for sale, or having in possession with intent to sell, any oleomargarine, butterine or any similar substance, made or colored so as to resemble or be in imitation of yellow butter.

All licenses under this act shall expire on the thirty-first day of December of each year, but licenses may be granted to commence on the first day of any month for the remainder of a year, upon payment of a proportionate part of the annual license fee; such licenses may be transferred by the Dairy and Food Commissioner upon the application in writing of the person, firm or corporation to which the same has been granted: Provided, The transferee shall comply with the regulations made by the said Dairy and Food Commissioner in regard to the said transfer, and shall thereafter comply with the provisions of this act.

Wholesale dealers, within the meaning of this act, shall be all persons, firms and corporations who shall sell to dealers, and persons who shall buy to sell again, and all persons, firms and corporations who make sales in quantities of ten pounds and over, at any time; and retail dealers shall be all persons, firms and corporations who shall sell in quantities less than ten pounds.

Section 3. After obtaining the license required by this act, the person, firm or corporation obtaining the same shall, before beginning any business under this said license, hang up and display, in a conspicuous place, on the walls of the room or store in which the

oleomargarine, butterine or other similar substance is manufactured, sold or exposed for sale, the license so obtained as aforesaid; and shall also procure from the Department of Agriculture, through the Dairy and Food Commissioner, a sign or signs, which in number, size and lettering shall be as the Dairy and Food Commissioner shall direct, and which shall be uniform throughout the Commonwealth, clearly setting forth that he, she or they are engaged in the manufacture or sale of oleomargarine; which said sign or signs, when procured, shall be hung up in a conspicuous place or places on the walls of every room or store in which the oleomargarine, butterine or other similar substance is manufactured or sold. And in addition to such sign or signs, so hung up as aforesaid, every proprietor of a hotel, restaurant, dining room or boarding house, shall also have conspicuously placed, upon every counter or table at which food, meals or refreshments are served to customers, a placard plainly printed, in letters not less than one-half inch in length, stating that oleomargarine is used and served to customers.

Section 4. It shall be unlawful for any person, firm or corporation, or any agent thereof to sell, or offer or expose for sale, or have in possession with intent to sell, any oleomargarine, butterine or similar substance, not in imitation of yellow butter, which is not marked and distinguished, on the outside of each tub, package or parcel thereof, in a conspicuous place, by a placard with the word "OLEOMARGARINE" printed thereon; such placard to be placed in a conspicuous position, in full view of the purchaser, and the said word "OLEOMARGARINE" on such placard shall be printed in plain, uncondensed, Gothic letters, not less than one inch long, and such placard shall not contain any other words thereon. And there shall also be displayed upon every open tub, package or parcel containing such oleomargarine, butterine or any similar substance, not in imitation of yellow butter, in the same manner, in a conspicuous position, a placard with the word "OLEOMARGARINE" printed thereon, in the same form as above described in this section; and when oleomargarine, butterine or other similar substance, not in imitation of yellow butter, is sold from such tub or package, or otherwise, at retail, in print, roll or other form, before being delivered to the purchaser it shall be wrapped in wrappers, plainly stamped on the outside thereof with the word "OLEOMARGARINE," printed or stamped thereon in letters one-fourth inch square; and said wrapper shall also contain the name and address of the seller and the quantity sold, and no other words thereon, and the said word "OLEOMARGARINE," so stamped or printed on the said wrapper, shall not be in any manner concealed, but shall be in plain view of the purchaser at the time of purchase.

Section 5. Every licensed manufacturer of oleomargarine, butterine or other similar product, not in imitation of yellow butter, and every licensed wholesale dealer therein, shall keep a book in which shall be entered accurately every sale and shipment of oleomargarine, butterine or other similar substance, not in imitation of yellow butter; giving the date of sale and shipment, the quantity, the person to whom sold and shipped, the place to which shipped, and the name of the transportation line by which shipped; which book shall always be open to the examination of the Dairy and Food Commissioner, his agents, attorneys and representatives. Every licensed retail dealer in oleomargarine, butterine or similar

substance, not in imitation of yellow butter, shall keep an accurate account, in a book open to the examination of the Dairy and Food Commissioner, his agents, attorneys and representatives, in which shall be entered the date of the receipt of all purchases of oleomargarine, butterine or any similar substance, made by such retail dealer; stating therein where, when and from whom purchased, and the quantity; and the said books, so to be kept by manufacturers, wholesale and retail dealers, shall be in such form as the Dairy and Food Commissioner shall direct.

Section 6. Every person, firm or corporation, and every officer, agent, servant and employe of such person, firm or corporation, who shall manufacture, sell or offer, or expose for sale, or have in possession with intent to sell, oleomargarine, butterine or any similar substance, in violation of any of the provisions of this act; or who shall sell oleomargarine, butterine, or any similar substance, as or for butter; or who shall fail to keep a book, in accordance with the last preceding section; or who shall, in any other respects, violate any of the provisions of this act, shall for every such offense forfeit and pay the sum of one hundred dollars, which shall be recoverable, with the costs, including the expense of analysis, by any person suing in the name of the Commonwealth, as debts of like amount are by law recoverable; and justices of the peace and aldermen throughout this Commonwealth shall have jurisdiction to hear and determine all actions for recovery of said penalties, with the right to either party to appeal to the court of common pleas, as provided in existing laws in suits for penalties. And all penalties and costs imposed and recovered under the provisions of this act shall be paid to the Dairy and Food Commissioner, or his agents and by him immediately covered into the State Treasury, to be paid out and used as hereinafter provided.

Section 7. In addition to the above penalty, every person, firm or corporation, and every officer, agent, servant or employe of such person, firm or corporation, who violates any of the provisions of this act shall also be guilty of a misdemeanor; and upon conviction thereof, shall be punished for the first offense by a fine of not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or both, at the discretion of the court; and upon conviction of any subsequent offense, shall be punished by a fine of not less than five hundred dollars, nor more than one thousand dollars, and by imprisonment in the county jail for not less than six months nor more than twelve months.

Section 8. In any proceeding under this act, either for the collection of a penalty or a prosecution for a misdemeanor, the certificate of the Dairy and Food Commissioner and the Secretary of Agriculture, under the seal of the Department of Agriculture, shall be accepted by the justices of the peace, aldermen, and courts of record, as evidence of the granting of licenses to manufacture or sell oleomargarine or butterine, or of the fact that no such license has been granted to any particular person, firm or corporation.

Section 9. Whenever a suit for the collection of a penalty, under the provisions of this act, shall be appealed to any court of record, or whenever any prosecution for a misdemeanor on account of any violation of the provisions of this act has been returned to any

court of quarter sessions, it shall be lawful for the Dairy and Food Commissioner, his agents or attorneys, in case the person or persons who have been sued for such penalty, or prosecuted for such misdemeanor, have since the commencement of such suit or prosecution again violated any of the provisions of this act, to apply to the court, having jurisdiction of such appeal of such prosecution, or to any law judge thereof, by petition, setting forth the facts, and asking the said court to make an order commanding and restraining the person or persons, so sued or prosecuted as aforesaid, from further violating any of the provisions of this act until such time as the said suit for penalty or the said prosecution shall have been finally decided and determined; and thereupon the said court, or any law judge thereof, after such notice to such person or persons, so sued or prosecuted as aforesaid, as to the said court or judge may appear proper, and after inquiring into the facts alleged in said petition, shall, if satisfied that any violation of the provisions of this act have been committed by such person or persons since the commencement of said suit or prosecution, make an order commanding and restraining the said person or persons from any further violation of the provisions of this act until such time as the said suit or prosecution shall have been finally decided and determined; and in case, upon the final determination of said suit or prosecution, it shall appear that the said person or persons had incurred the liability to payment of the penalty for which suit had been so brought, or has been duly convicted of a misdemeanor in the prosecution so commenced as aforesaid, the said court or law judge thereof shall make the aforesaid order, restraining the said person or persons from further violation of the provisions of this act, continuing and permanent; and any violation by any person or persons of any such restraining order of such court or judge, whether the said restraining order shall be made during the pendency of a suit for penalty or of a prosecution as above stated, or after the final determination of such suit or prosecution in the manner aforesaid, shall be punishable as a contempt of the court so making the said order; and the said court is hereby authorized to take such steps for the punishment of such contempt as may by law be now taken for disregarding any injunction or other order of the courts of common pleas of this Commonwealth, sitting in equity and exercising equity jurisdiction. No security shall be required on the part of the petitioner for such restraining order, and the cost of the application and subsequent proceedings thereon shall be in the discretion of the court.

Section 10. It shall be the duty of every constable in any city, borough, ward or township of this Commonwealth, having knowledge of any violation of this act, or whenever requested so to do by the Dairy and Food Commissioner, his agent, or attorney, or by any citizen of this Commonwealth, to make report to the court of quarter sessions of the proper county, as part of his quarterly report and return to said court, of the name of every person, firm or corporation known by him to have violated any of the provisions of this act, or alleged by the person so giving notice as aforesaid to said constable to have violated any of the provisions of this act, and the names of all witnesses furnished to said constable, whose testimony it is alleged will sustain or prove the fact

of such violation; and it shall be the duty of the judge of the said court to make inquiry of all constables, at the time of making their quarterly returns to the court of quarter sessions, as to whether they have knowledge, and whether notice has been given to them, respectively, of any violation of this act, in accordance with the terms of this section; and whenever such quarterly reports shall contain the name of any persons alleged to have violated the provisions of this act, together with the names of witnesses to prove such violations, as also the name of the person giving notice to the constable as aforesaid, the said court shall direct the district attorney to prepare an indictment against every person so named, and call and send the witnesses, whose names have been so returned, before the grand jury then sitting, in support of the said indictment; and if a true bill shall be returned by the grand jury, thereupon to issue summary process to bring the person so charged to answer the matters alleged in such prosecution, and thereupon proceed to trial as speedily as possible, according to the course of practice in the said court of quarter sessions.

Section 11. The Dairy and Food Commissioner shall be charged with the enforcement of all the provisions of this act; but any citizen of the Commonwealth, having knowledge or information of the violation of any of the provisions of this act, may, in the name of the Commonwealth, begin a suit for penalty or prosecution for misdemeanor in accordance with the provisions of this act, and may prosecute to final judgment any such suit or prosecution, giving notice in writing, however, to the Dairy and Food Commissioner of the commencement of such suit or prosecution, immediately upon commencement of the same, stating the nature of the proceeding and the magistrate before whom commenced; and shall, in like manner, report to the Dairy and Food Commissioner each successive step taken in such suit or prosecution; and such citizen shall, upon complying with the provisions of this section, be entitled to receive one-half of any penalty or fine which may be recovered in such proceeding and paid to the Dairy and Food Commissioner; and immediately upon the receipt and covering into the treasury of any such penalty or fine, recovered and paid in any proceeding commenced by a citizen as aforesaid, the Dairy and Food Commissioner shall pay the one-half thereof to the said citizen, so commencing said proceedings and complying with the provisions of this section. Such citizen shall also be entitled to recover from the defendant his witness fees and other legal costs as fixed by law, in said proceeding.

Section 12. The money paid into the Treasury under the provisions of this act shall constitute a special fund, for the use of the Department of Agriculture in enforcing this law; and may be drawn out upon warrants signed by the Secretary of Agriculture and approved by the Auditor General, subject, however, to the payment to any citizen commencing and successfully prosecuting a proceeding for any violation of this act, under the last preceding section, of one-half of the penalty or fine so recovered in such proceedings and paid into the State Treasury.

Section 13. The Dairy and Food Commissioner, his assistants, agents, experts, chemists, detectives and counsel, duly appointed by him for the purpose, shall have full access, egress and ingress to all

places of business, factories, farms, buildings, carriages, cars, vessels and cans, used in the manufacture, transportation and sale of any dairy products, or of any adulteration or imitation thereof; and shall also have power and authority to open any package, can or vessel containing, or which may be supposed to contain, oleomargarine, butterine or other similar substance, or any adulteration or imitation of butter, which may be manufactured, sold or exposed for sale in violation of any of the provisions of this act, or of any act which may be hereafter enacted in relation to butter or the adulteration or imitation thereof; and they shall also have power to take from such package, can or vessel samples for analysis, upon paying or tendering the value of such samples.

Section 14. The Dairy and Food Commissioner shall publish a semi-annual bulletin, and distribute the same in the same manner as other bulletins of the Department of Agriculture are published and distributed; which semi-annual bulletin shall contain the name and address of every person, firm or corporation to whom a license has been issued for the manufacture or sale of oleomargarine, butterine or other similar substance; and, also, a tabulated statement of all the actions, civil or criminal, which have been brought for the violation of this act, giving the name and address of the defendant, and the disposition of every such case.

Section 15. All acts or parts of acts inconsistent with this act are hereby repealed; but the repeal of said acts shall not in any way interfere with, or prevent the prosecution to final termination of, any actions, civil or criminal, now pending or which may hereafter be commenced, for any violation of said acts which has already been committed.

Approved—The 29th day of May, A. D. 1901.

RENOVATED OR PROCESS BUTTER ACT.

AN ACT

Defining boiled or process butter; designating the name by which it shall be known; providing for the licensing of manufacturers and dealers therein, and regulating the sale and labelling of the same so as to prevent fraud and deception in its sale; providing punishment for violations of this act, the methods of procedure for its enforcement, and certain matters of evidence in such procedure.

Section 1. Be it enacted, &c., That for the purposes of this act certain food products, usually known as "boiled" or "process" butter, produced by taking original package stock and other butter and melting the same so that the butter oil can be drawn off, mixed with milk or skimmed milk or other material, and by emulsion or other process produce butter, and butter produced by any similar process, and commonly known as "boiled" or "process" butter; and which "boiled" or "process" butter for the purpose of this act shall be known and designated as "renovated butter."

Section 2. Every person, firm or corporation, and every agent of such person, firm or corporation, who shall desire to engage in the business of manufacturing or selling "renovated butter," shall first make application to the Department of Agriculture for a license, authorizing him, her or them to engage in the manufacture or sale

of "renovated butter," and such application for license shall be in such form as shall be prescribed by the Department of Agriculture through its agent, the Dairy and Food Commissioner; which application, in addition to other matters which may be required to be stated therein by the said Dairy and Food Commissioner, shall contain an accurate description of the place where the proposed business is intended to be carried on, and the name and style under which it is proposed to conduct the said business, which name and style shall not, in the judgment of the Dairy and Food Commissioner, be calculated to deceive or mislead the public as to the real nature of the business so proposed to be carried on; and if the said application is satisfactory to the said Dairy and Food Commissioner, he shall issue to the applicant or applicants a license, authorizing him, her or them to engage in the manufacture or sale of "Renovated Butter," for which said license the applicant or applicants shall first pay, annually, the following sum: if a manufacturer, the annual sum of one thousand (\$1,000) dollars; if a wholesale dealer, the annual sum of five hundred (\$500) dollars; if a retailer, the annual sum of one hundred (\$100) dollars; if a restaurant keeper or dining room proprietor or a hotel proprietor, the annual sum of fifty (\$50) dollars; if a boarding house keeper, the annual sum of ten (\$10) dollars; and the said license fees, when received by the said Dairy and Food Commissioner or his agent, shall be by him immediately paid into the State Treasury. All licenses under this act shall expire the thirty-first day of December of each year, but licenses may be granted to begin on the first of any month, for the remainder of a year, upon the payment of a proportionate part of the annual license fee. Wholesale dealers, within the meaning of this act, shall be all persons, firms or corporations who shall sell to dealers, and persons who shall buy to sell again, and all persons, firms and corporations who make sales in quantities of ten pounds and over at any time. An agent of a manufacturer located outside of the State, and taking orders within this State for such "Renovated Butter," to be delivered from the factory or from a storagehouse, or from one place of business to another within this State, shall be, within the meaning of this act, a wholesale dealer. And retail dealers shall be all persons, firms or corporations who sell in quantities of less than ten pounds. Every restaurant keeper or dining room proprietor or hotel proprietor or boarding house keeper, who furnishes "Renovated Butter" as part of the meal served to customers or guests, shall be regarded as a dealer in "Renovated Butter." Such license may be transferred by the Dairy and Food Commissioner, upon the application in writing of the person, firm or corporation to which the same has been granted, provided the transferee shall comply with the provisions of this act and with the regulations made by the said Dairy and Food Commissioner in regard to the said transfer. Such license shall not authorize the manufacture or sale, exposing for sale or having in possession with intent to sell, "Renovated Butter" at any place other than that designated in the application and license. The license, procured as aforesaid, shall be hung up in a conspicuous place, in the place of business, room or store where such "Renovated Butter" is authorized to be sold.

Section 3. That no person, firm or corporation shall sell or offer or expose for sale, or have in his, her or their possession with intent to sell, any "Renovated Butter" from a wagon or other vehicle, or upon the public streets or roads, or from house to house.

Section 4. Every person, firm or corporation who shall obtain a license for the manufacture or sale of "Renovated Butter" shall also be required, before engaging in such manufacturing or sale, to procure from the Dairy and Food Commissioner a sign or signs, of such form, size and lettering as the Dairy and Food Commissioner shall determine, and which shall be uniform throughout the Commonwealth; which said sign or signs shall clearly set forth that he, she or they are engaged in the manufacture or sale of "Renovated Butter," and which sign or signs when procured shall be hung up in a conspicuous place or places, on the walls of each room or store or place of business in which "Renovated Butter" is manufactured or sold; and in addition to such sign or signs, so hung up as aforesaid, every restaurant keeper or dining room proprietor, or hotel proprietor or boarding house keeper, shall also have conspicuously placed upon every counter or table, at which food, meals or refreshments are served to customers, a placard, plainly printed in letters not less than one-half inch in length, stating that "Renovated Butter" is used and served to customers. Every person, firm or corporation who shall obtain a license as a manufacturer or wholesale dealer, for the manufacture or sale of renovated butter, shall also be required, before engaging in such manufacture or sale, to procure from the Dairy and Food Commissioner a stencil, of such form, size and lettering as the Dairy and Food Commissioner shall determine, and which shall be uniform throughout the Commonwealth; which said stencil shall designate the number of the said license and the name and address of the holder thereof; which said stencil shall be used by the manufacturer or wholesale dealer, and said stencil brand shall be placed on each and every package, before being sold by the manufacturer or wholesale dealer to the retailer. If any package of renovated butter shall be found in the possession of any manufacturer or wholesale dealer or retail dealer, without the said stencil brand being found thereon, such package shall be seized by the Dairy and Food Commissioner or by any of his agents, and said package shall be forfeited, and shall be sold by the Dairy and Food Commissioner or his agents, and the proceeds thereof paid to the State Treasurer, for the use of the Department of Agriculture.

Section 5. It shall be unlawful for any person, firm or corporation, or any agent thereof, to sell, or offer or expose for sale, or have in his, her or their possession with intent to sell, any "Renovated Butter," not marked and distinguished on the outside of each tub, package or parcel thereof, in a conspicuous place, by a placard with the words "Renovated Butter;" and such placard shall be printed in plain, uncondensed Gothic letters, not less than one-half inch long, and such placards shall not contain any other words, printing or device thereon; and also, upon every open tub, package or parcel, containing such "Renovated Butter," there shall be displayed in the same manner, in a conspicuous place, a placard with the words "Renovated Butter" printed thereon, in the same form as above described in this section; and when "Renovated But-

ter" is sold from such package, or otherwise, at retail, in print, or roll or other form, before being delivered to the purchaser it shall be wrapped in wrappers, plainly stamped on the outside thereof with the words "Renovated Butter," printed or stamped thereon in letters one-quarter of an inch square, and such wrapper shall contain no other words or printing thereon; and the said words "Renovated Butter," so stamped or printed on the said wrapper, shall not be in any manner concealed, but shall be in plain view of the purchaser at the time of purchase.

Section 6. Every person, firm or corporation who shall have obtained a license, and be engaged in the business of manufacturer or wholesale dealer in "Renovated Butter," shall keep a book, in which shall be entered accurately every sale and shipment, the quantity and person to whom sold and shipped, the place to which shipped, and the name of the transportation line by which shipped; which said book shall be always open to the inspection of the Dairy and Food Commissioner, or his agents, attorneys and representatives. Every retail dealer in "Renovated Butter" shall keep an accurate account, in a book open to the examination of the Dairy and Food Commissioner, his agents, attorneys and representatives, in which said book shall be entered the date of the receipt of all purchases of "Renovated Butter" made by such retail dealer, stating therein where and from whom purchased, and the quantity so purchased.

Section 7. Every person, firm or corporation, and every agent of such person, firm or corporation, who shall manufacture, sell or offer, or expose for sale, or have in his, her or their possession with intent to sell, "Renovated Butter," in violation of any of the provisions of this act, or who shall in any other respects violate any of the provisions of this act, shall for every offense forfeit and pay the sum of one hundred (\$100) dollars, which shall be recoverable with the costs, including the expenses of the inspection and analysis, by any person suing in the name of the Commonwealth, as debts of like amount are by law recoverable; and justices of the peace and aldermen, throughout this Commonwealth, shall have jurisdiction to hear and determine all actions for recovery of penalties for violation of the provisions of this act, with the right of appeal in either party to the court of common pleas, as provided in existing laws in suits for penalties; and all penalties and costs, imposed and recovered under the provisions of this act, shall be paid to the Dairy and Food Commissioner or his agents, and by him immediately covered into the State Treasury, to be paid out and used as hereinafter provided.

Section 8. In addition to the above penalty, every person, firm or corporation, and every agent of such person, firm or corporation, who violates any of the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction shall be punished first offense by a fine of not less than one hundred (\$100) dollars, nor more than three hundred (\$300) dollars, or by imprisonment in the county jail for not more than thirty (30) days, or both, at the discretion of the court; and for the second offense, by a fine of not less than three hundred (\$300) dollars and not exceeding five hundred (\$500) dollars, and imprisonment not exceeding (2) two years.

Section 9. In any proceedings under this act, either for the collection of a penalty or prosecution for a misdemeanor, the certificate of the Dairy and Food Commissioner and the Secretary of Agriculture, under the seal of the Department of Agriculture, shall be accepted by justices of the peace, aldermen and courts of record as evidence of the granting of a license to manufacture or sell "Renovated Butter," or of the fact that no such license has been granted to any particular person, firm or corporation.

Section 10. Whenever a suit for the collection of a penalty, under the provisions of this act, shall be appealed to any court of record, or whenever any prosecution for a misdemeanor, on account of any violation of the provisions of this act, has been returned to any court of quarter sessions, it shall be lawful for the Dairy and Food Commissioner, his agents or attorneys, in case the person or persons who have been sued for such penalty or prosecuted for such misdemeanor have, since the commencement of such suit or prosecution, again violated any of the provisions of this act, to apply to the court having jurisdiction of such appeal or of such prosecution, or to any law judge thereof, by petition setting forth the facts, and asking the said court to make an order commanding and restraining the person or persons, so sued or prosecuted as aforesaid, from further violating any of the provisions of this act until such time as the said suit for penalty or the said prosecution shall have been finally decided and determined; and thereupon the said court, or any law judge thereof, after such notice to such person or persons, so sued or prosecuted as aforesaid, as to the said court or judge may appear proper, and after inquiring into the facts alleged in said petition, shall, if satisfied that any violation of the provisions of this act has been committed by such person or persons since the commencement of said suit or prosecution, make an order, commanding and restraining the said person or persons from any further violations of the provisions of this act, until such time as the said suit or prosecution shall have been finally decided and determined; and in case, upon the final determination of said suit or prosecution, it shall appear that the said person or persons had incurred the liability to payment of the penalty for which said suit had been so brought, or has been duly convicted of a misdemeanor in the prosecution so commenced as aforesaid, the said court or law judge thereof shall make the aforesaid order, restraining the said person or persons of a misdemeanor, and upon conviction, shall be punished for the further violation of the provisions of this act, continuing and permanent; and any violation by any person or persons of any restraining order of such court or judge, whether the restraining order shall be made during the pendency of a suit for penalty, or a prosecution as above stated, or after the final determination of such suit or prosecution in the manner aforesaid, shall be punishable as a contempt of the court so making the said order. And the said court is hereby authorized to take such steps for the punishment of such contempt as may by law be now taken for disregarding any injunction or other order of the courts of common pleas of this Commonwealth sitting in equity and exercising equity jurisdiction. No security shall be required on the part of the petitioner for such restraining order, and the costs of the application and subsequent proceedings thereon shall be in the discretion of the court.

Section 11. It shall be the duty of every constable in any city, borough, ward or township of this Commonwealth, having knowledge of any violation of this act, or whenever requested so to do by the Dairy and Food Commissioner, his agents or attorneys, or by any citizen of this Commonwealth, to make report to the court of quarter sessions of the proper county, as part of his quarterly report and return to said court, of the name of every person, firm or corporation known by him to have violated any of the provisions of this act, or alleged by the person, so giving notice as aforesaid to said constable, to have violated any of the provisions of this act, and of the names of all witnesses, furnished to said constable, whose testimony it is alleged will sustain and prove the fact of such violation. And it shall be the duty of the judge of the said court to make inquiry of all constables, at the time of the making of their quarterly returns to the court of quarter sessions, as to whether they have knowledge, and whether notice has been given to them, respectively, of any violation of this act, in accordance with the terms of this section; and whenever such quarterly reports shall contain the name of any person alleged to have violated the provisions of this act, together with the names of witnesses to prove such violation, and also the name of the person giving notice to the constable, as aforesaid, the said court shall direct the district attorney to prepare an indictment against every person so named, and call and send the witnesses, whose names have been so returned, before the grand jury then sitting, in support of the said indictment; and if a true bill shall be returned by the grand jury, thereupon to issue summary process to bring in the person so charged, to answer the matters alleged in such indictment, and thereupon proceed to trial as speedily as possible, according to the course of practice in the said court of quarter sessions.

Section 12. The Dairy and Food Commissioner shall be charged with the enforcement of all the provisions of this act; but any citizen of the Commonwealth, having knowledge or information of the violation of any of the provisions of this act, may, in the name of the Commonwealth, begin a suit for penalty or prosecution for misdemeanor, in accordance with the provisions of this act, and may prosecute to final judgment any suit or prosecution, giving notice in writing, however, to the Dairy and Food Commissioner of the commencement of such suit or prosecution immediately upon the commencement of the same, stating the nature of the proceeding and the magistrate before whom commenced, and shall in like manner report to the Dairy and Food Commissioner each successive step taken in such suit or prosecution; and such citizen shall, upon complying with the provisions of this section, be entitled to receive one-half of any penalty or fine which may be recovered in such proceeding and paid to the Dairy and Food Commissioner; and immediately upon the receipt and covering into the treasury of any such penalty or fine, recovered and paid in any proceeding commenced by a citizen, as aforesaid, the Dairy and Food Commissioner shall pay the one-half thereof to the said citizen, so commencing said proceeding and complying with the provisions of this section. Such citizen shall also be entitled to recover from the defendant his witness fees and other legal costs, as fixed by law, in said proceeding.

Section 13. The money paid into the treasury under the provisions of this act shall constitute a special fund, for the use of the Department of Agriculture in enforcing this law, and may be drawn out upon warrants signed by the Secretary of Agriculture and approved by the Auditor General; subject, however, to the payment to any citizen commencing and successfully prosecuting a proceeding for any violation of this act, under the last preceding section, of one-half of the penalty or fine so recovered in such proceeding and paid into the State Treasury.

Section 14. The Dairy and Food Commissioner, his assistants, agents, experts, chemists, detectives and counsel, duly appointed by him for the purpose, shall have full access, egress and ingress to all places of business, factories and farm buildings, carriages, cars, vessels and cans, used in the manufacture, transportation and sale of any dairy products, or of any adulteration or imitation thereof; and shall also have power and authority to open any package, can or vessel containing, or which may be supposed to contain, renovated butter, which may be manufactured, sold or exposed for sale in violation of any of the provisions of this act; and they shall also have power to take from such package, can or vessel samples for analysis, upon paying or tendering the value of such samples.

Section 15. The Dairy and Food Commissioner shall publish a semi-annual bulletin, and distribute the same in the same manner as other bulletins of the Department of Agriculture are published and distributed; which semi-annual bulletin shall contain the name and address of every person, firm or corporation to whom a license has been issued for the manufacture or sale of renovated butter, and also a tabulated statement of all actions, civil or criminal, which have been brought for the violation of this act; giving the name and address of the defendant, and the disposition of every case.

Section 16. All parts of the act approved the fourth day of May, Anno Domini one thousand eight hundred and ninety-nine, entitled "An act to regulate the sale of butter, produced by taking original packing stock and other butter and melting the same so that the butter oil can be drawn off, mixed with skimmed milk or other material, and by emulsion or other process produce butter, and butter produced by any similar process, and commonly known as "Boiled" or "Process" butter; providing for the enforcement thereof, and punishment for the violation of the same;" inconsistent with this act, are hereby repealed.

Approved—July 10, 1901.

FRESH MEAT, POULTRY, GAME AND FISH ACT.

AN ACT

To prohibit the selling, shipping, consigning, offering for sale, exposing for sale, or having in possession with intent to sell, as fresh, any meat, poultry, game, fish, or shell fish which contains any substance or article possessing a preservative or coloring character or action; making the same a misdemeanor; and to prescribe penalties and punishment for violations, and the means and the methods of procedure for the enforcement thereof.

Section 1. Be it enacted, &c., That if any person, firm or corporate body shall, by himself, herself or themselves, or by his, her, or their or its, agents or servants, sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell, as fresh, any meat, poultry, game, or shell fish which contains any substance, article or ingredient possessing a preservative character or action, or which contains any coal-tar dye, or any other substance or ingredient possessing a coloring character or action, shall be deemed guilty of a misdemeanor; and, upon conviction thereof in the court of quarter sessions of the peace of the proper county, shall be sentenced to pay a fine of not less than one hundred dollars nor more than two hundred dollars, and all costs, or to undergo an imprisonment in the county jail not less than sixty days nor more than ninety days, or both, at the discretion of the court; and, upon conviction of any subsequent offense, shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars, or be imprisoned not less than sixty days nor more than four months, or both or either, at the discretion of the court: Provided, That nothing in this section shall prohibit the use of ice as a preservative, or proper refrigeration.

Section 2. The Dairy and Food Commissioner shall be charged with the enforcement of all provisions of this act; and all penalties which may be recoverable, and all fines which may be paid, in any proceeding or proceedings to enforce the provisions of this act, shall be paid to the Dairy and Food Commissioner, or his agent, and by him paid into the State Treasury; and the money so paid shall constitute a special fund, for the use of the Dairy and Food Commissioner in enforcing this act, and may be drawn out upon warrants signed by the Dairy and Food Commissioner or Secretary of Agriculture, and approved by the Auditor General.

Section 3. All acts or parts of acts inconsistent with this act are hereby repealed; but the repeal of said acts shall in no way interfere with, or prevent the prosecution to final termination of, any action or prosecution now pending, or which may be hereafter commenced for any violation of said acts, which has already been committed.

Approved—The 28th day of March, A. D. 1905.

IMITATION DAIRY PRODUCTS IN PENAL AND CHARITABLE INSTITUTIONS.

AN ACT

To prohibit the use of any adulteration or imitation of dairy products in any charitable or penal institution, being supplementary to an act, entitled "An act for the protection of the public health and to prevent adulteration of dairy products and fraud in the sale thereof," approved May twenty-one, Anno Domini one thousand eight hundred and eighty-five.

Section 1. Be it enacted, &c., That it shall not be lawful for any charitable or penal institution in the State of Pennsylvania to use, or furnish to its inmates, any substance, the manufacture or sale of which is prohibited by section one of the act, entitled "An act for the protection of the public health and to prevent the adulteration of dairy products and fraud in the sale thereof," approved May twenty-first, Anno Domini one thousand eight hundred and eighty-five.

Section 2. That any officer, agent, steward or other official of any such charitable or penal institution, who shall knowingly buy any substance the manufacture or sale of which is prohibited by section one of the said act of May twenty-one, Anno Domini one thousand eight hundred and eighty-five, for use in such charitable or penal institutions, or who shall knowingly cause such substance to be used by the inmates of such charitable or penal institution, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding one thousand dollars, or imprisonment not exceeding two years for each offense, or either or both at the discretion of the court.

Section 3. Every person who shall knowingly sell or offer for sale, to any officer, agent, steward or other official of any charitable or penal institution, any substance, the manufacture or sale of which is prohibited by section one of the said act of May twenty-first, Anno Domini one thousand eight hundred and eighty-five, for use in such charitable or penal institution, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding two years, or either or both at the discretion of the court.

Approved—The 23rd day of May, A. D. 1893.

SUMMARY OF APPELLATE COURT DECISIONS AND OPINIONS
RELATIVE TO OLEOMARGARINE, FOOD AND
MILK STATUTES.

COMMONWEALTH NEED NOT FURNISH SAMPLES TO DEFENDANTS
FOR ANALYSIS.

(IN THE COURT OF QUARTER SESSIONS OF BLAIR COUNTY.)

COMMONWEALTH

vs.

J. A. Koller, et al.

In re. rule to show cause why portions of samples taken by the Commonwealth should not be turned over to defendants for analysis.

BY THE COURT: "So far as the rule for a bill of particulars is concerned, as ruled by the Supreme Court in Commonwealth vs. Powell, 23 Sup. Ct. 372, a bill of particulars in a criminal case is not a matter of right, but is only an appeal to the sound discretion of the Court. My recollection is that in some of the pure food indictments in cases tried in this Court there was simply an allegation in the indictment that the pure food act had been violated, without specifying the particular violation. I am inclined to think that that indictment was perfectly good. We have our Act of Assembly which provides that an indictment shall be deemed sufficient which simply follows the words of the Act of Assembly, and if this indictment had simply followed the words of the Act of Assembly, and been in the general form with which we found other indictments, we would feel it but right and proper that the Commonwealth should specify the particular article of food which was supposed to be adulterated, and at least specify in a general way how that particular article of food was adulterated; but in the present instance the particular article of food is specified, to wit, chocolate, and there is a general statement as to how it is adulterated.

I think we will all agree on a moment's reflection that the rulings of the appellate courts on this subject are perfectly right and proper. The authority cited by Mr. Baldrige is not an analagous authority at all. In the first place, as stated by Mr. Woodward, the physical examination to which the plaintiff is compelled to subject himself is always made—and I am speaking only as to the orders of—is always in the presence of the physician of the plaintiff, I have drawn frequent orders compelling plaintiffs in damage cases to submit to physical examinations, but I was always careful to provide that the physician of the plaintiff should be present so that no unfair advantage could be taken of the plaintiff, and that everything that was done there was done in the presence of the physician of the plaintiff. But, it seems to me that the endeavor to liken a civil

proceeding to a criminal proceeding is fallacious, and that is the vice of the offer. In a civil proceeding the plaintiff may be compelled to subject himself to a physical examination. At the same time, he has the mutual and co-ordinate right of compelling defendant to disclose his case. Not so in a criminal case. The defendant can hold all the papers in his possession, and there is no power to compel him to produce them. He can sit on the witness stand and say, "I have a paper at home," and the Court is powerless to make him produce evidence to establish his guilt. That is one reason. In the second place a civil suit is tried on the weight of the evidence. Each party comes in with an equal right to be heard as to the measure of proof, but in a criminal suit the burden is on the Commonwealth to establish the case beyond a reasonable doubt, and these maxims of ours about the reasonable doubt that the jury must come to the firm, unwavering conviction that the defendant is guilty, have come to us from times when judges were wont to hang a man for stealing a loaf of bread. Now I do not say in the present criminal procedure that we should get away from those old maxims, but I do say that while we adhere to those old maxims, (which we adopted when they hung men for stealing a loaf of bread,) such maxims ought not to be applied against the Commonwealth on the one side, and, then, on the other hand, the Commonwealth be compelled to disclose all their case; and the absence of precedent to my mind is strong proof that there is no warrant for a Court compelling the Commonwealth to submit their evidence in advance to the defendant.

It does seem to me that the able criminal lawyers who have defended criminals charged with grave offenses, if there was any warrant for such a precedent, would have brought it in force. Take for instance a murder case. The Commonwealth claims that they found on the prisoner a bloody shirt, and that the blood stains are human blood, not chicken blood, or blood which he received butchering a hog, but human blood; now we all know that the experts on the part of the defense coach the lawyers for the defense while they cross-examine the experts of the Commonwealth, but I do not think there would be any warrant for a defendant charged with murder to say "you must tear that shirt in two, and you must give my chemist one-half of the alleged blood stains so that they can prepare a defense;" or, to put it more mildly, that they can have the alleged blood stains analyzed. I do not know of any such precedent, and the very fact that Mr. Baldrige, after diligent search, has been unable to find one, to my mind is proof that there is no warrant to force the Commonwealth to produce the evidence they are going to submit. As I said before, in a civil suit, under certain equitable rules, each side must apprise the other side of what evidence they are going to use, but I do not think it would be fair to say to the Commonwealth, you must give the defendant all your side of the case so that he can examine and ransack it, and at the same time allow the defendant to keep his mouth shut. It seems to me that would be giving a defendant an unfair advantage, and it seems to me it would be unfair to compel the Commonwealth to allow a defendant to subject their samples to examination in advance, and I will overrule the application for the compelling of the production of such samples.

As to experiments in open Court, I do not know to what extent I will go about a matter of that kind. I did rule in the formaldehyde cases where Mr. Hicks wanted to take a drink of the preservative, and wanted the Court to take a drink of it, and let the jury take a drink of it, I did rule that he could take a drink, but the Court would not, and would not have the jury do so. Mr. Hicks was going to turn the Court into a laboratory, and I think we said we would not have any laboratory here in Court. I do not know to what extent I would go if there was an effort on the part of the defendant to examine samples by microscopic tests—I will leave that matter open.”

I hereby certify that the forgoing is a correct transcript of the opinion of the Court in the case of Commonwealth vs. J. A. Koller, et al., in re. rule for turning over of portion of sample taken by Commonwealth.

J. F. MECK,
Official Stenographer,
Courts of Blair County.

COURT OPINIONS.

LEGISLATIVE POWERS. DELEGATING POLICE POWER. LEGISLATURE CAN REGULATE FOOD SUPPLY.

Powell vs. Commonwealth, 114 Penna. 265.

Powell vs. Commonwealth, 127 U. S. 678. (Act of May 21, 1885.)

Nothing but a clear violation of the Constitution—a clear usurpation of power prohibited—will justify the judicial department in pronouncing an Act of the Legislative department unconstitutional and void.

The Act of May 21, 1885, P. L. 22, relating to oleomargarine, clearly falls within the police power of the State. Test of a police regulation prohibiting the making and vending of a particular article of food is not alone whether it is in part unwholesome and injurious. A prohibition may stand as a reasonable police regulation for the benefit of the public, if we believe that the only way to prevent the public from being defrauded into purchasing the counterfeit article for the genuine, is by such prohibition. The fact that scientific experts may pronounce a manufactured product intended for human food to be wholesome and not injurious, and that in a pure state, it may thus be good for food, does not render it incompetent for the legislature to prohibit the manufacture and sale of the article, if in the judgment of the legislature, and not of the courts, it be necessary for the protection of the lives, health and property of the citizens, and to the preservation of good order and the public morals. The Act of May 21, 1885, is not in conflict with Amendment XIV, of the Constitution of the United States.

OLEOMARGARINE SERVED WITH MEALS. RESTAURANT KEEPERS
TO BE LICENSED.

Commonwealth vs. Miller, 131 Penn. 118.

A restaurant keeper furnishing oleomargarine to a customer, as a part of a meal ordered by the latter, violates thereby both the letter and spirit of Sec. 3, Act of May 21, 1885, P. L. 22, which provides that every person * * * who shall manufacture, sell, or offer, or expose for sale, or have in his * * * possession with intent to sell," oleomargarine, "shall, for every such offence, forfeit and pay the sum of one hundred dollars."

GUILTY KNOWLEDGE NOT NECESSARY. SELLING OR SERVING OLEO-
MARGARINE IN IGNORANCE OF ITS TRUE CHARACTER NO BAR TO
PROSECUTION.

Commonwealth vs. Weiss, 139 Penna. 247.

Guilty knowledge, or guilty intent, is, in general, an essential element in crimes at law; but, whether a criminal intent, or a guilty knowledge, is a necessary ingredient of a statutory offence is a matter of construction, to be determined from the language of the statute, in view of its manifest purpose and design.

One who sells "oleomargarine," in ignorance of its real nature, is nevertheless liable for the penalty imposed by Sec. 3, Act. of May 21, 1885, P. L. 22, which contains nothing to imply that the forbidden act must have been done knowingly or wilfully; to construe the act so as implying would defeat its manifest intent.

ORIGINAL PACKAGES. WHEN ORIGINAL PACKAGE IS BROKEN,
SUBJECT TO STATE LAWS.

Commonwealth vs. Paul, 148 Penna. 559.

The Act of May 21, 1885, P. L. 22, (oleomargarine), which in its first and third sections prohibits the sale of oleomargarine, being a regulation enacted for the protection of the public health, is a constitutional exercise of the police power of the State, and is, therefore, not unconstitutional. Where oleomargarine was brought into this State in a package containing ten pounds, and out of this package two pounds were sold and delivered in a paper package, duly branded and stamped in the manner prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, it was held that there was a breaking of the original package, and thereby the contents of it became a part of the common mass of property within the State.

CONSTITUTIONALITY OF LAW. DEFINING MULTIPLICITY OF SUITS.

Commonwealth vs. Shirley, 152 Penna. 170.

The Act of May 21, 1885, P. L. 22, entitled "An act for the protec-

tion of public health, and to prevent the adulteration of dairy products and fraud in the sale thereof," is constitutional: *Powell vs. Commonwealth* 114 Pa. 265, reaffirmed.

It seems that the sale of oleomargarine and the subsequent exposure of it for sale on the same day are not separate offences for which a double penalty can be imposed under the Act of May 21, 1885.

If, however, the double penalty imposed by the court is less than the maximum fine for the one offence as provided by the act, the Supreme Court will not reverse the judgment.

MULTIPLYING PENALTIES IN OLEOMARGARINE SUITS. DEFINING CERTAIN RIGHTS OF DEFENDANTS.

Commonwealth vs. Roberts, 152 Penna. 174.

The selling of oleomargarine, the having it in possession, and the exposing of it for sale on the same day, are not separate offences under the Act of May 21, 1885, for which penalties can be multiplied. The sale in such a case embraces all that has gone before and leads up to it, as necessary incidents, and constitutes one completed violation of the act.

THE RIGHT OF APPEAL. WHEN APPEALS WILL BE QUASHED.

Commonwealth vs. Callahan, 153 Penna. 625.

Where there is no reservation in a case stated of a right of appeal or certiorari, the decision of the lower court is final, and an appeal to the Superior Court will be quashed.

OLEOMARGARINE AS AN ARTICLE OF FOOD. MUST BE PURCHASED AS SUCH TO SUCCESSFULLY PROSECUTE.

Commonwealth vs. Schollenberger, 153 Penna. 625.

A person cannot be convicted of violating the Oleomargarine Act of April 21, 1885, P. L., 22, unless it affirmatively appears that it was sold as an article of food. The law reads when sold "as an article of food."

OLEOMARGARINE IN ORIGINAL PACKAGE. TO BE SOLD AS "AN ARTICLE OF FOOD."

Commonwealth vs. Madden, 153 Penna. 627.

In this case the defendant filed affidavit that oleomargarine was sold in an "original package," and that it was not sold "as an article of food." Court discharged the rule without filing an opinion. Held, on an appeal and certiorari to the Supreme Court that the judgment should be affirmed.

AGENT FOR NON-RESIDENT MANUFACTURER. DEFINING LAW RELATING TO "ORIGINAL PACKAGES," ETC.

Commonwealth vs. Schollenberger, 156 Penna. 201.

A non-resident who comes into this State to embark in business, is in the same situation as that of a resident, and the business done at his store is State, and not inter-state commerce.

A non-resident manufacturer of oleomargarine who sells his product in this State at a store, managed by an agent with an internal revenue license, is not engaged in inter-state commerce, and his agent is amenable to the penalties of the oleomargarine Act of May 21, 1885, P. L. 22.

An "original package" is such form and size of package as is used by producers or shippers for the purpose of securing both convenience in handling, and security in transportation of merchandise between dealers in the ordinary course of actual commerce.

Where a mode of putting up a package is not adapted to meet the requirements of actual inter-state commerce, but the requirement of an unlawful inter-state retail trade, the dealer will not be protected on the ground that he is selling an original package.

A case stated averred in substance that defendant was an agent of a non-resident manufacturer of oleomargarine, and that he sold at his store in this State, a package of oleomargarine weighing eighty pounds, made and stamped and branded in Rhode Island, for use as an article of food. Held, that the statement did not amount to an assertion that the sales were made in the "original packages" of commerce.

Leisey vs. Hardin, 135 U. S. 100, held that goods in the original packages with seals unbroken, and no sales having been made therefrom were not liable to seizure under the police laws of the state into which they had been brought. Beyond this it does not go. Com. vs. Zelt, 138 Pa. 615, discussed and applied.

PROPER SUBJECT OF COMMERCE. STATE CANNOT TOTALLY EXCLUDE AND PREVENT SALE OF OLEOMARGARINE.

Commonwealth vs. Schollenberger, 171 U. S. 1.

Oleomargarine is a proper subject of commerce among the States and with foreign nations.

The fact that inspection or analyses of the article imported may be somewhat difficult and burdensome will not justify a State in totally excluding a pure and healthy food product.

The State cannot absolutely prohibit the introduction within its borders of an article of commerce which is not adulterated, and which in its pure state, is healthful, simply because such article in the course of its manufacture may be adulterated by dishonest manufacturers for the purpose of fraud or illegal gains.

As Congress taxes oleomargarine and recognizes it as a proper subject of commerce, it cannot be totally excluded from a State, simply because the State decides that, for the purpose of preventing the importation of an impure or adulterated article it will not permit the introduction within its borders of the pure and unadulterated article.

Sale of the ten pound package of oleomargarine manufactured and imported and sold by the importer, under the circumstances stated, was a valid one, although sold to a person who was a consumer.

An importer may sell original packages of oleomargarine by an agent, as well as personally, to consumers as well as wholesale dealers, and the exercise of this right was not prevented by the fact that the packages were suitable for retail trade.

The same opinion declared the Pennsylvania statute of 1885 invalid so far as it prohibited the introduction of oleomargarine from another State.

OLEOMARGARINE LAW CONSTITUTIONAL. NOT AT VARIANCE WITH CONSTITUTION OF THE UNITED STATES.

Commonwealth vs. McCann, 198 Penna. 509.

In this opinion the Act of May 5, 1899, P. L. 241, relating to the sale of oleomargarine, was declared as not in conflict with Article 1, Section 1 of the Constitution of Pennsylvania, nor Section 1 of the fourteenth amendment of the Constitution of the United States.

COURTS CAN ISSUE INJUNCTIONS. ILLEGAL SALES OF OLEOMARGARINE CAN BE RESTRAINED. POLICE POWERS.

Commonwealth vs. Andrews, 211 Penna. 110.

Section 9, of the Act of May 29, 1901, P. L. 327, conferring jurisdiction upon the court of quarter sessions to issue a restraining order enjoining a defendant from further selling oleomargarine without a license, is a constitutional exercise on the part of the legislature of the police powers of the State. The proceeding authorized by the section is in no way equitable in character, and such as should be within the jurisdiction in equity vested in the court of common pleas.

No question of the right of trial by jury arises in such a proceeding, and even if there were, there is nothing in the constitution which prohibits the legislature from declaring new offences and defining the mode by which the guilt of the persons accused thereof may be determined.

REAFFIRMED CONSTITUTIONALITY. OLEOMARGARINE ACT OF 1901 CONSTITUTIONAL.

Commonwealth vs. Caulfield, 211 Penna. 644.

The court decreed that the Act of May 29th, 1901, P. L. 327, relating to the sale of oleomargarine, is constitutional.

INTER-STATE COMMERCE, ETC. HOW SALE OF OLEOMARGARINE IS REGULATED.

Commonwealth vs. Paul, 170 Penna. 284.

A package devised by a non-resident manufacturer, or put up by him, adapted for sale at retail to individual consumers, such for ex-

ample as a flask of whiskey or a tub or pail or roll of oleomargarine, and actually sold by him or his agent to the consumer for use as an article of food or drink, in violation of the laws of the State where such sales take place, is not an "original package" within the meaning of the law relating to inter-state commerce; and the punishment of such sales under the police power of the State is not an interference with the powers of Congress, or with the commerce between the States which is protected by the Constitution of the United States.

The character of the package whether the original or not, is a question of fact for the jury when there are facts to be passed upon bearing upon this question; when the facts are however, agreed upon, or presented by a special verdict, the question is one of law, and should be decided by the court.

Where a small package is prepared in another State and brought into this State, and sold at retail, it is fair to presume that the package was intended by him who devised it for the purpose for which he used it in his business.

A small tub of oleomargarine containing ten pounds, prepared in another State and brought into this State to be sold unbroken to a consumer for use as an article of food upon his table, and actually so sold, is not an original package within the meaning of the law relating to inter-state commerce.

The fact that a dealer in oleomargarine has procured a license from the Internal Revenue Department of the United States authorizing him to deal in oleomargarine, does not authorize him to engage in the manufacture or sale of oleomargarine in violation of the State laws lawfully passed forbidding or regulating such manufacture and sale.

CONTRACT OF SALE. HOW CLAIMS ARE RECOVERABLE.

Braunn vs. Keally, 146 Penna. 519.

The court decreed, that the contract was a contract of sale; not of agency; and, being made and executed on delivery to the carrier in Illinois, where the vendor lost his control over the goods, the agreed price was recoverable from the defendant in this State, notwithstanding the prohibitive provisions of the Act of May 21, 1885, P. L. 22.

Knowledge that the defendant might, or even that he intended to violate the laws of this State, could not vitiate a contract made and executed in another State. The dominion of the vendor ceased before there was any violation of the law of Pennsylvania, and even the purchaser then had the *locus poenitentiae*.

An averment that the plaintiffs violated an agreement to give the defendants the exclusive sales-agency, and afterwards adjusted the damages therefrom by agreeing to a certain deduction from their claim, without averring that the goods sued for were bought on the faith of the agreed agency and remained unsold, set forth no real defence.

OLEOMARGARINE LAW VALID. ACT NOT IN VIOLATION OF THE UNITED STATES CONSTITUTION.

Walker vs. Commonwealth, 11 Atlan 623.

Plaintiffs were manufacturers of oleomargarine. They were in-

dicted for its manufacture and sale contrary to the provisions of the Pennsylvania Act of May 21, 1885, entitled "An act for the protection of the public health, and to prevent adulteration of dairy products, and fraud in the sale thereof." Held that the act was not in violation of the fourteenth amendment to the United States Constitution.

OLEOMARGARINE COLORING vs. BUTTER. COLORING BY VENDOR
PUNISHABLE.

Commonwealth vs. VanDyke, 13 Superior 484.

The Act of May 5, 1899, P. L. 241, regulating the manufacture and sale of oleomargarine, butterine, etc., is not in conflict with or in violation of the constitution of the United States, giving to Congress the exclusive power to regulate commerce between States.

The plain intention of the legislature to be extracted from the Act of 1899 is to prohibit the imitation of yellow butter by any admixture or addition to oleomargarine during or after manufacture. The legislature may punish the manufacture or vendor of oleomargarine for adding any color thereto. The effect of the statute is that butter may be colored yellow, but oleomargarine may not be so colored. This opinion reviews oleomargarine legislation at length, consequently is of special interest.

HOW DEFENDANTS ARE PUNISHABLE. FINE AND IMPRISONMENT
MAY BE IMPOSED.

Commonwealth vs. Diefenbacher, 14 Superior 264.

The Act of May 5, 1899, P. L. 241, does not offend against any provision of the constitution in that it provides for a penalty for the sale of oleomargarine under certain conditions, and also makes the same act a misdemeanor. The penalty recovered in the civil action and the fine and imprisonment imposed in the criminal prosecution, are but parts of one punishment.

OLEOMARGARINE LAW CONSTITUTIONAL. NO INFRINGEMENT UPON
INDIVIDUAL RIGHTS.

Commonwealth vs. McCann, 14 Superior, 221.

That the Act of May 5, 1891, P. L. 241, regulating the sale of oleomargarine is constitutional has been construed in *Com. vs. Vandyke*, 13 Pa. Superior Ct. 484.

The Act is what its title indicates, a regulation; not a prohibition of the manufacture and sale of oleomargarine. Such regulation does not conflict with commerce clause of the National constitution, and it cannot be declared to be an infringement of the rights of the citizen secured by Section 1, Article 1, of the State constitution, or by the 14th Amendment of the National constitution.

HOW OLEOMARGARINE PENALTIES ARE PROVIDED.

Commonwealth vs. Fink, 16 Superior 191.

Where two indictments are found against the same person for illegal sales of oleomargarine, and the first indictment charges an offence committed on June 3, 1900, and the second indictment charges an offence committed on July 6, 1900, the court has no power to impose a sentence of imprisonment on the first indictment, and merely a fine upon the second indictment, since the Act expressly provides that the punishment for the first offence shall be a fine only, and any subsequent offence a fine and imprisonment.

JAIL SENTENCES; WHEN IMPOSED. SUBSEQUENT OFFENSE NECESSARY.

Commonwealth vs. Neill, 16 Superior 210.

To warrant the court in sentencing a defendant to jail under the Act of May 5, 1899, the record must affirmatively show that he has been convicted of a subsequent offence; which, in contemplation of the act, is one that has been adjudicated according to law subsequent to a former conviction of the same defendant of an offence of the same character, committed prior to the offence charged in the second indictment.

THE QUESTION OF APPEALS. CONSTITUTIONAL LAW.

Commonwealth vs. Schollenberger, 17 Superior 218.

It is improper to take one appeal where three indictments against the same person are tried before the same jury, but separate verdicts and judgments are entered.

A motion in arrest of judgment is not the proper mode of raising questions as to the sufficiency of the evidence.

The Act of May 5, 1899, P. L. 241, regulating the sale of oleomargarine is constitutional.

SALE OF RENOVATED BUTTER. LAW CONSTITUTIONAL. IGNORANCE OF ARTICLE OR LAW NO EXCUSE.

Commonwealth vs. Seiler, 20 Superior 260.

The Act of July 10, 1901, P. L. 643, relating to the manufacture and sale of "renovated butter" is a proper exercise of the police powers of the State, and is declared constitutional.

It is not an improper exercise of the police power to require that "renovated butter" should be labeled, so as to distinguish it from creamery butter.

A dealer in butter who has bought renovated butter as for creamery butter, and sells it as such in good faith, is fully liable under the Act of July 10, 1901 for not having taken out a license. In such a case the intention of the violators of the law is immaterial. The Commissioner cannot favorably consider such allegation of innocence.

SOLICITING ORDERS FOR OLEOMARGARINE. ORIGINAL PACKAGES
DISCUSSED.

Commonwealth vs. Leslie, 20 Superior 529.

A person may be convicted of selling oleomargarine unlawfully colored in imitation of butter in violation of the Act of May 5, 1899, P. L. 241, where it appears that he solicited orders for the article, and received pay for the same at the time the orders were given; that he sent the orders, together with the money, to a manufacturer in another state; that the manufacturer packed the several parcels ordered in one crate or box and addressed and sent the same to the dealer as "agent," and that the latter distributed the parcels to the several persons who had ordered them.

In such a case it is immaterial that the dealer did not receive a commission from the manufacturer.

Where bottles or packages are fastened together and are marked or are packed in a large box, barrel, crate or other receptacle, the outside box, bundle or receptacle, and not any box or package contained therein, constitutes the original package, and this is equally true although each bottle or package is separately wrapped in paper, and labelled, "Original package," with the name of the importer.

COURT CAN RESTRAIN ILLEGAL SALES OF OLEOMARGARINE. LEGISLATURE CAN DECLARE NEW OFFENCES AND DEFINE PUNISHMENT.

Commonwealth vs. Andrews, 24 Superior 571.

Section 9 of the Act of May 29, 1901, P. L. 327, conferring jurisdiction upon the court of quarter-sessions to issue a restraining order enjoining a defendant from further selling oleomargarine without a license, is a constitutional exercise on the part of the legislature of the police power of the State. The proceeding authorized by the section is in no way equitable in character, and such as should be within the jurisdiction in equity vested in the court of common pleas.

No question of the right by trial by jury arises in such a proceeding, and even if there were, there is nothing in the Constitution which prohibits the legislature from declaring new offences and defining the mode by which the guilt of the persons accused thereof may be determined.

PENALTY FOR PUBLIC OFFENCE. MAGISTRATES' RECORDS; HOW
PROCEEDINGS ARE TO BE RECORDED.

Commonwealth vs. Davidson, 11 Superior, 130.

An appeal lies from the judgment of the common pleas on certiorari to the judgment of an alderman for penalty due the Commonwealth for an offence; such a proceeding in nature and effect is a proceeding for a criminal offence.

In an action which in its true nature and effect, is a proceeding for the punishment of a criminal offence, although in form an action

of debt, it is still essential that the record shall contain a finding set forth in express terms, or to be implied with certainty, that a special act has been performed by the defendants, and that it shall describe or define it in such a way as to individuate it, and show that it falls within the unlawful class of acts. Without this, a judgment that the law has been violated goes for nothing.

QUESTION OF COLOR IN OLEOMARGARINE. ADMISSIBILITY OF EVIDENCE.

Commonwealth vs. Mellet, 27 Superior, 41.

Relative to incompetent evidence, the court decreed that the admission of such evidence will not be grounds for reversal where it is afterwards rendered competent by the introduction of other evidence.

Where on the trial of an indictment for selling oleomargarine colored to look like yellow butter, a sample of white oleomargarine and a sample of creamery butter are admitted for the purpose of comparison, but without any evidence as to genuineness of the samples, the judgment against the defendant will not be reversed for that reason, if it appears that an expert witness subsequently testified that the samples were what they were alleged to be.

In an indictment for the sale of colored oleomargarine, where the evidence shows that the color was due to cotton-seed oil, it is proper to sustain an objection to the following question asked upon cross-examination: "And cotton-seed oil, as an ingredient, is recognized as a legitimate ingredient, is it not?" A reply would involve for a complete answer a construction of the statute, which is not within the province of the witness to give.

On the trial of an indictment for selling oleomargarine colored yellow to resemble butter, if it is competent for the defendant to prove that cotton-seed oil is, in a commercial sense, a necessary constituent of oleomargarine, it is equally competent for the Commonwealth to introduce the explanatory proof in rebuttal that the necessary use of cotton-seed is not to give the product in which it is used the color of yellow butter.

On the trial of an indictment for selling oleomargarine "made or colored so as to resemble or be in imitation of yellow butter," a conviction may be sustained, although there is no evidence of the artificial coloration of the oleomargarine by the addition, thereto, in the process of manufacture or afterwards, of any substance which had no other function than to cause it to resemble and be an imitation of yellow butter. A consideration of the subject shows that the latter act is not to be given a construction which will restrict it to "artificial coloration."

ABSENCE OF SAMPLE IN SUIT. SAMPLE NEED NOT BE PRODUCED.

Commonwealth vs. Caulfield, 27 Superior 279.

On the trial of an indictment for the illegal sale of oleomargarine, witnesses may be permitted to testify as to the resemblance of the article sold, to yellow butter, without the Commonwealth being required to explain the non-production of the article itself.

Where on the trial for an indictment for the illegal sale of oleomargarine, the defendant alleges that all oleomargarine, where there is no ingredient introduced solely for coloring purposes, is naturally yellow in color, the Commonwealth may be permitted, in rebuttal, to introduce in evidence, a sample of oleomargarine white in color.

The court also decreed that the Act of May 29, 1901, P. L. 327, relating to the sale of oleomargarine is not unconstitutional as being insufficient in title.

ADULTERATED MILK. RESPONSIBILITIES FOR THE SALE OF ADULTERATED MILK BY EMPLOYEES.

Commonwealth vs. Hough, 1 Distr. 53.

Adulterated milk means milk diluted with water, or by the addition of water or ice to the milk. Skimmed milk, containing less than a certain per cent. of cream, is deemed to be adulterated; likewise, milk that contains less than $12\frac{1}{2}$ per cent. of milk solids. Proof that milk contains less than the required percentage of cream or milk solids, must be given before the party selling it can be convicted of selling adulterated milk.

An admission by employe that he skimmed milk by direction of defendant, coupled with proof of sale of skimmed milk from unmarked cans, warrants the inference by the jury that if the employe violated the law in one respect, by direction of his employer, he violated it in another, and watered the milk by the same authority.

The Act of May 25, 1878, P. L. 144, P. L. 131, is not unconstitutional, in that it provides for a fine, and also for imprisonment until fine be paid.

Qnaere, whether the Act of May 8, 1889, is unconstitutional, in that cities of the first class, boroughs and townships were omitted, not decided.

Protective legislation, regarding milk, reviewed by the court, and the several acts collated.

CLAIMS IN ADULTERATED MILK CASE. MILK ACT DECLARED CONSTITUTIONAL.

Commonwealth vs. Darlington, 9 Distr. 700.

An indictment can be sustained under the Act of June 26, 1895, P. L. 317, for adding water to milk, as the quality, strength and purity of the milk is affected thereby, and it is not necessary to sustain a conviction under the indictment, to produce evidence that the defendant took water and put it into the milk.

The misdemeanor is in no manner qualified or reduced by the fact that the defendant sold the milk as "condemned" milk, nor will it do to say that the probability that the lactometer is an inaccurate instrument justified the defendant in so doing.

There being a doubt whether or not the Act of May 25, 1878, P. L. 144, was repealed by the Act of June 26, 1895, P. L. 317, sentence will be imposed under the last named Act.

OLEOMARGARINE IN CHARITABLE AND PENAL INSTITUTIONS PROHIBITED. LAW DECLARED CONSTITUTIONAL.

Commonwealth vs. Webster, 13 Distr. 199.

The Act of May 23, 1893, P. L. 112, which provides "that it shall not be lawful for any charitable or penal institution in the State of Pennsylvania to use or furnish to its inmates any substance, the manufacture and sale of which is prohibited by Section 1 of the Act entitled..... approved May 21, 1885," and makes it a misdemeanor for any officer of such institution to knowingly buy such prohibited substance for use therein, does not amend or extend the provisions of the Act of May 21, 1885, P. L. 22, but merely adds to it without modifying it, and is therefore supplementary to it as distinguished from amendatory, and does not violate Section 6, Art. III. of the Constitution.

The Act of May 23, 1893, P. L. 112, does not violate Section I of the 14th Amendment of the Constitution of the United States or Section 7, Art. III. of the Constitution of Pennsylvania.

The Act of May 21, 1885, P. L. 22, is not repealed by the Acts of May 5, 1899, P. L. 241, and May 29, 1901, P. L. 327.

In re Oleomargarine in Charitable Institutions, 13 Dist. Reps. 78, approved.

A county poorhouse is a charitable institution within the purview of the Act of May 23, 1893, P. L. 112.

IMPORTANCE OF COMPLETE RECORD. VALUE OF JUSTICE'S RECORD.

Hess vs. Monier, 1 Distr. 606.

In an action for a penalty, the cause of action must be distinctly stated on the record.

Where one is sued for the penalty prescribed for a violation of the Oleomargarine Act, May 21, 1885, the justices' record, to be sustained on certiorari, must show the particular offense with which the defendant was charged.

In a suit under that statute it is not necessary that there should be an information made as the basis of action. Nor is it necessary, as in a summary conviction, that the evidence should be returned as a part of the record.

In such a suit the justice may, after the testimony closes, amend his record so as to make the Commonwealth the plaintiff.

CERTIORARI TO MAGISTRATES. SELLING OLEOMARGARINE AS BUTTER.

Commonwealth vs. Blossom, 12 C. C. 580.

In a suit before a magistrate where the record shows a suit by A to sue B. and C., for a penalty for a violation by defendant of the Act of May 21, 1885, (also reciting the title thereof), by selling oleomargarine as butter; and that after hearing plaintiff's witnesses,

judgment was publicly rendered for plaintiff and against defendant, for the penalty prescribed by said Act, and costs of suit, the judgment will be reversed on certiorari.

OLEOMARGARINE "AS ARTICLE OF FOOD." STATEMENT MUST CERTIFY FACT.

Commonwealth vs. Schmidt, 13 C. C. 28.

In an action for unlawfully selling oleomargarine, the statement is insufficient if it does not aver that the oleomargarine was sold "as an article of food."

SALE OF DISEASED ANIMALS OR DISEASED FLESH. SAME DECLARED A MISDEMEANOR.

Commonwealth vs. Horn, 13 C. C. 164.

This decree in substance is as follows: Under the Act of March 31, 1860, which declares that "if any person shall sell or expose for sale the flesh of any diseased animal, or any other unwholesome flesh, knowing the same to be diseased or unwholesome, they shall be deemed guilty of a misdemeanor," it is a misdemeanor to sell to a butcher a live steer that is visibly suffering from a swelling on the jaw which proves to be the disease known as actinomycosis, or "lump-jaw."

The word "flesh" is interpreted to mean live flesh and dead flesh.

SALE OF RENOVATED BUTTER. HOW PENALTIES PRESCRIBED ARE TO BE COLLECTED.

Commonwealth vs. Nice & Schreiber, 13 D. R. 309.

The proper practice to recover the penalties imposed by Sections 7 and 8 of the Act of July 10, 1901, P. L. 463 relating to "renovated butter," is, under Section 7, for the justice to issue a summons in a civil action, and, after hearing, to enter a judgment for the amount of the penalty and costs; and, under Section 8, to issue a warrant for the defendant, and, after a hearing, to hold him for trial, if the evidence warrants it. When the justice issues a warrant under Section 8, and, after hearing, fines the defendant \$100 and costs, he exceeds his jurisdiction.

SUMMARY CONVICTIONS. RECORD MUST DISCLOSE CAUSE OF ACTION.

Commonwealth vs. Cochran Creamery Co., 4 C. C. 253.

Regarding summary conviction, etc., the court decreed that a judgment of a justice for the penalty "for the violation of the Act of Assembly, approved May 21, 1885, entitled, An Act for the protection of the public health, under the first and third sections of said

Act," will not be sustained. The record must disclose a cause of action and some evidence of the acts constituting the offence, when the court will look into evidence of facts, on certiorari.

ADULTERATIONS OF FOOD, ETC. PURE FOOD LEGISLATION DISCUSSED.

Commonwealth vs. Wilson, 9 Del. 357.

Neither Section 2, 3 nor 4 of the Act of 26 May, 1893, P. L. 152, authorizing the President of the State Board of Agriculture to appoint an agent to execute and enforce all laws in relation to the adulteration or imitation of dairy products, and authorizing the said agent to appoint assistants to enter places of business and to open packages containing dairy products and take samples therefrom for analysis, nor Section 6 of the Act of 26 June, 1895, P. L. 317, violate Article 3, Section 27, of the Constitution of Pennsylvania, prohibiting the creation of a State office for the inspection of any merchandise, manufacture or commodity.

When a complaint describes the prosecutor as a certain official, the affidavit is made by the prosecutor as an individual, and the affidavit, and the indictment founded thereon, are good notwithstanding the Act of Assembly creating the office by virtue of which the official is acting, is unconstitutional.

The term "food" as used in the Act of 26 June, 1895, P. L. 317, includes milk, and a person offering for sale adulterated milk may be convicted of violating said Act.

The defendant was prosecuted for selling milk adulterated with water, and milk and cream containing boracic acid. The indictment contained twenty-seven counts based upon the Act of 26 June, 1895, P. L. 317, prohibiting the adulterating of food; five based upon the Act of 7 July, 1885, P. L. 260, prohibiting the sale of adulterated milk in cities of the second and third class, and nine based upon the Act of 10 June, 1897, P. L. 142, amended by the Act of 19 April, 1901, P. L. 85, prohibiting the sale of milk to which has been added boracic acid, etc. Held that the counts were not improperly joined. Held also, that the Commonwealth should not be required to elect upon which counts it would try the defendant.

Quære. Not decided whether Section 6, Act of 26 June, 1895, P. L. 317, providing that the Dairy and Food Commissioner shall have the same power to enforce the provisions of that Act as given him to enforce the Act of 26 May, 1893, P. L. 152, by which he receives his appointment, violates Article III, Section 6, of the Constitution of Penna., providing that "no law shall be revived, amended, or the provisions thereof extended or conferred, without re-enacting and publishing the same at length."

TITLE OF ACT TO INDICATE MEANING. ARTICLES OF FOOD AND DRINK.

Commonwealth vs. Pfoutz, 22 Lanc. 102.

It is within the power of the Legislature to define the terms used in an Act of Assembly, but if a term is defined to include something not usually known by such term, some notice must be given in title.

The Act of June 26, 1895, P. L. 317 "to provide against the adulteration of food," is unconstitutional so far as it relates to the sale of blackberry brandy, although the second section defines "food" as used in the act to include "all articles used as food or drink."

COMPOUND COFFEE. SALE OF "MIXTURES" OR "COMPOUNDS."

Stevens & Wedlar's application, 5 D. R. 104.

A mixture compounded of coffee and a certain amount of chicory, wheat, rye or peas, dried and browned, and labelled "Best Rio," "Prime Rio," French Rio," or "Broken Java," and the words "Coffee Compound," showing the nature of the mixture, cannot be sold in Pennsylvania; it is an adulteration within the meaning of the Act of June 26, 1895.

It would seem that it is difficult to define what are "mixtures or compounds recognized as ordinary articles or ingredients of articles of food" to which the Act does not apply. What are such, within the meaning of the Act, must depend upon the facts of each particular case, and the burden of proof is upon the one claiming that his "compound" is within the exemption.

ADULTERATIONS DEFINED. CONTAMINATION OF FOOD AND EFFECT THEREOF.

Commonwealth vs. Arow, 32 Superior 1.

Principal questions raised on this appeal were considered in Com. vs. Curry, 4 Pa. Superior Court, Rep. 356, and was implicitly passed upon in Com. vs. Kevin, 202, Pa., 23, in which cases indictments for the sale of adulterated food were sustained.

Adulteration has reference not only to the act of contamination but to the condition of the food as the result of such debasement. The act established precautionary measures against food adulteration, but also provides means to prevent sale.

A most obvious and effective method of guarding against the adulteration of food is to prohibit its sale.

The objection that the prosecution was brought by an agent of the Department of Agriculture is without merit. Whether an agent of the Department or not, the prosecutor had a right to institute the proceedings for a criminal violation of law.

SUITS BY AGENTS AND PRIVATE PARTIES. WHO MAY BRING PROSECUTIONS.

Commonwealth vs. Spencer, 28 Superior 301.

A conviction under the Pure Food Law of May 26, 1893, P. L. 152, as amended by the Acts of March 13, 1895, P. L. 17 and June 26, 1895, P. L. 317, will not be set aside on the ground that the in-

formation was made by a special agent of the Dairy and Food Commissioner, and that the office of Dairy and Food Commissioner was in violation of Article III, Section 27, of the Constitution, which provides that "no State office shall be continued or created for the inspecting or measuring of any merchandise, manufacture or commodity." In such a case the conviction does not depend upon the character of the person who instituted the proceeding, but upon testimony adduced at the trial for the violations of sections of the Acts already sustained as constitutional by the Appellate Courts.

Such sections are clearly severable and distinguished from any reference to the creation of the office of Dairy and Food Commissioner.

DUTY OF THE DAIRY AND FOOD COMMISSIONER. WHEN PROSECUTIONS SHALL BE BROUGHT.

Opinion by Attorney Gen'l Elkin. Pure Food Law Application, 11 D. R. 423.

Under the Pure Food Law of June 26, 1895, P. L. 317, it is the duty of the Dairy and Food Commissioner, if he finds in the State any adulterated food, which includes preserved meats or any other food product containing poisonous or injurious substances, or substances which depreciate or injuriously affect the quality, strength or purity of the same, or which contains diseased, decomposed, putrid, infected or tainted substances, to see that the provisions of the law are enforced against the persons making sale of the same.

USE OF OLEOMARGARINE IN CHARITABLE INSTITUTIONS PROHIBITED. PROSECUTIONS FOR VIOLATIONS OF LAW CAN BE SUSTAINED.

Oleomargarine in Charitable Institutions, 28 C. C. 290.

The Dairy and Food Commissioner can sustain a prosecution under Section 2 of the Act May 23, 1893, P. L. 112, against the directors of a charitable or penal institution for furnishing its inmates with oleomargarine, inasmuch as the Act of May 26, 1893, P. L. 152, authorizes and empowers the Dairy and Food Commissioner to enforce all laws theretofore or thereafter enacted in relation to the adulteration or imitation of dairy products, particularly as Section 1 of the Act of May 26, 1893, which created the office of Dairy and Food Commissioner, charged the State Board of Agriculture with the enforcement of the provisions of the Act of May 21, 1885, P. L. 212.

The several Acts relating to oleomargarine distinguish between an offence committed by a manufacturer or seller, and an offence committed by the managers of a penal and charitable institution, the latter touching the regulation and discipline of such institutions.

PAYMENT OF RENOVATED BUTTER LICENSES. FEES TO BE PAID AT TIME OF APPLICATION.

Renovated Butter Licenses, 29 C. C. 112.

Under the Act of 1901, P. L. 643, the Dairy and Food Commissioner has no discretion, whatever, in the matter of extending the

time for the payment of the license fee to sell renovated butter at wholesale. The fee must be paid at the time of the issuance of the license.

Attention is also called to the following decision:

Lesse 13 D. R. 512.

Under the Act of May 29, 1901, P. L. 327, the Dairy and Food Commissioner is without power to extend the time of payment of the fee for a license to sell renovated butter at wholesale.

OLEOMARGARINE SERVED WITH MEALS A VIOLATION OF LAW.
MEANING OF OLEOMARGARINE LAW DEFINED.

Commonwealth vs. Miller, 131 Pa. 118.

A restaurant keeper furnishing oleomargarine to a customer, as a part of a meal ordered by the latter, violates thereby both the letter and the spirit of Section 3, Act of May 21, 1885, P. L. 22, which provides that "every person ***** who shall manufacture, sell, or offer, or expose for sale, or have in his possession with intent to sell," oleomargarine, "shall, for every such offense, forfeit and pay the sum of one hundred dollars."

RESTAURANT KEEPER SERVING OLEOMARGARINE MUST BE LICENSED. APPEAL FROM SUMMARY CONVICTIONS.

Commonwealth vs. Hendley, 7 S. C., 356.

A public caterer, who, for gain, furnishes oleomargarine as a part of a meal to his guests, is subject to the penalty provided by the Act of Assembly.

The discretion of the court below in refusing an appeal will not be disturbed, where the petition therefor is based on an allegation that, while the other constituents of the meal were sold, butter and oleomargarine were kept, for accommodation of the patrons of the establishment, for which no price was charged; this defense having been presented to the Alderman and passed on by him.

Appeals from a magistrate on summary convictions should not be allowed, save for cause shown. The whole matter rests in the sound discretion of the court below, and an appeal to the Superior Court must be regarded as a substitute for a certiorari. *Thompson vs. Preston*, 5 Pa. Superior Court, 154 followed.

SUPREME COURT AFFIRMS CONSTITUTIONALITY OF OFFICE.

In the quo-warranto proceedings in the Supreme Court of Pennsylvania in the case of Commonwealth of Pennsylvania, ex-relatione Hampton L. Carson, Attorney General, vs. B. Harry Warren, Dairy and Food Commissioner, the honorable court presented a judicial determination to the effect that the office of Dairy and Food Commissioner was properly and legally provided by the General As-

sembly of the Commonwealth, thus confirming the right of his title and the powers which the aforesaid official may lawfully exercise under the several Acts of Assembly regulating his appointment, duties, etc.

The same opinion of the Supreme Court decrees that the Act creating the office contravenes no constitutional provision, and that it is legislation in the interest of the public health and the general welfare. (March 7, 1907.)

ADDENDA.

Paul vs. Pennsylvania, 18 Supreme Court Reporter, (23 May, '98.)
 Schollenberger vs. Commonwealth, 18 Supreme Court Reporter, (23 May '98.)
 Oleomargarine Licenses, 27 D. R., 655.

RULES AND REGULATIONS FOR THE ENFORCEMENT OF THE PROVISIONS OF THE FOOD ACT OF PENNSYLVANIA, APPROVED THE 13th DAY OF MAY, A. D. 1909.

Harrisburg, Pa., June 15, 1909.

As required by Section 8 of the Food Act of Pennsylvania, approved the 13th day of May, A. D. 1909, the Dairy and Food Commissioner, charged with the enforcement of the provisions of said Act, has made the following rules and regulations for the enforcement thereof. These rules, where possible, conform to and are the same as the rules and regulations adopted for the enforcement of the Act of Congress, approved June 30, 1906, commonly known as the "Food and Drugs Act."

RULE NO. 1, SAUSAGE. Sausage or sausage meat shall be held to be a comminuted meat from neat cattle or swine, or a mixture of such meats, either fresh, salted, pickled or smoked, with added salt and spices and with or without the addition of edible animal fats, blood and sugar, or subsequent smoking. It shall contain no larger amount of water than the meats from which it is prepared, contain when in their fresh condition, and if it bears a name descriptive of kind, composition, or origin, it must correspond to such descriptive name. All animal tissues used as containers, such as casings, stomachs, etc., must be clean and sound and impart to the contents no other substance than salt. All sausage found to contain any cereal, or added water, or other substance, except as herein stated, shall be deemed to be adulterated.

RULE NO. 2, FRUIT PRESERVES, JAMS AND JELLIES. All fruit preserves, jams and jellies shall be true to name and contain nothing but the fruit after which they are called, together with sugar; except, that fruit butters may contain spices and vinegar. Where glucose is used as a substitute for sugar, either in whole or in part, for the purpose of sweetening or cheapening an article of food, the substance should be marked to show the presence of glucose,

such as glucose jelly, glucose jam, glucose fruit butter, together with the name of the fruit which gives it the flavor, in accordance with the provisions of the Act relating to branding.

RULE NO. 3, POWDERING AND COATING. The term "powdered," as used in the Fourth Clause of Section 3 of the Act, shall be held to mean the application of any powdered substance to the exterior portion of articles of food.

The term "coated," as used in the same clause, shall mean the application of any substance to the exterior portion of a food product.

RULE NO. 4, COATING OF RICE. No coating of any kind may be used for rice where the same is used to conceal damage or inferiority, or to make the rice appear of better or greater value than it is. In each case, whether or not such a result be secured, is a question of fact to be decided by the evidence.

RULE NO. 5, COLORS. The use of any dye, harmless or otherwise, to color or stain a food in a manner whereby damage or inferiority is concealed, or whereby the food is made to appear of better or greater value than it is, is specifically prohibited by law. The use in food for any purpose of any mineral dye, or any coal tar dyes not hereinafter listed, will be grounds for prosecution. Until further notice the coal tar dyes hereinafter named, made specifically for use in foods, and which bear a guaranty from the manufacturer that they are free from subsidiary products and represent the actual substance the name of which they bear, may be used in foods. The following coal tar dyes which may be used in this manner are given numbers, the numbers preceding the names referring to the number of the dye in question as listed in A. G. Green's edition of the Schultz-Julius Systematic Survey of the Organic Coloring Matters, published in 1904.

The list is as follows:

RED SHADES:

- 107. Amaranth.
- 56. Ponceau 3 R.
- 517. Erythrosin.

ORANGE SHADE:

- 85. Orange I.

YELLOW SHADE:

- 4. Napthol yellow S.

GREEN SHADE:

- 435. Light green S. F. yellowish.

BLUE SHADE:

- 692. Indigo disulfoacid.

Each of these colors shall be free from any coloring matter other than the one specified, and shall not contain any contamination due to imperfect or incomplete manufacture. (F. I. D. 76.)

RULE NO. 6, SODIUM BENZOATE AND SULPHUR-DIOXIDE. Under the Fourth proviso of the Fifth Clause of Section 3, the following articles of food are designated as those articles of food in which benzoate of soda, or benzoic acid, have heretofore been generally used, to wit:

Catsup, mince-meat, sweet chow-chow, sweet pickles, preserves, jams, jellies, fruit-butter, shredded and dried cod-fish and cider, when used as a food ingredient.

For the purpose of this Act, one-tenth of one per centum of benzoate of soda, or benzoic acid equivalent thereto, may be used in the foods above enumerated, provided, the fact that sodium benzoate has been used in the preparation of such foods shall be plainly stated on each package thereof.

The use of sodium benzoate is not permissible in any other article of food, except those hereinabove designated.

The word "package," as used in the Fourth Proviso of the Fifth Clause of Section 3 of the Act, shall include all containers, whether supplied by the dealer or by the consumer.

RULE NO. 7, SODIUM BENZOATE AND SULPHUR-DIOXIDE, continued. When any quantity of sodium benzoate or sulphur-dioxide has been used in the preparation of a food, that fact shall be plainly stated on each package, and the Act also provides, under the Fourth Clause of Section 4, relating to misbranding, that the labeling of packages required by this Act shall be on the main label of each package, and in type not less than 8-POINT BREVIER CAPS in size, unless the size of the package will not permit the use of 8-POINT CAP type, in which case the size of the type may be reduced proportionately and in such position and terms as may be plainly seen and read by the purchaser.

Under these separate clauses the presence of sodium benzoate or sulphur-dioxide will be held to be plainly stated on each package of food when the fact of such presence is stated in such a way as that it may be plainly seen and read by the purchaser, in colors contrasting with the ground on which it is placed and in character of type and position upon the container in conformity with the provisions of the Act.

RULE NO. 8, MEATS, PRESERVES AND SIMILAR FOOD SUBSTANCES THAT ARE LIKELY TO BE CONTAMINATED BY EXPOSURE TO FLIES AND OTHER INSECTS, OR EXPOSED TO THE DUST OF THE STREET OR THE STORE. Under the provisions of the Sixth Clause of Section 3 of the Act, an article of food is adulterated where the same is an animal or vegetable substance produced, stored, transported, or kept in a way or manner that would render the article diseased, contaminated or unwholesome. Under this Clause of the Act, meats, preserves and similar food substances that are likely to be contaminated by exposure to flies and other insects, or exposed to the dust of the street or the store will be required to be kept screened so as to prevent all contamination.

RULE NO. 9, GUARANTY. The guaranty referred to in the Food Act of Pennsylvania, approved the 13th day of May, A. D. 1909, shall in all cases be a written or printed invoice guaranty, bearing the date of said invoice, upon each bill of goods purchased, signed by the vendor, and substantially in the following language, to wit:

I (or we) the vendor of the articles mentioned in the foregoing invoice, hereby guarantee and warrent the same to be in full conformity with the Act of the General Assembly of Pennsylvania, known as the "NEW FOOD LAW," approved the 13th day of May, 1909, in that the said articles are not adulterated or misbranded within the meaning of the aforesaid act.

(Signature).....

RULE NO. 10, LABELS. Numerous requests are referred to this Bureau for the approval of labels to be used in connection with food products under the Food Act of Pennsylvania, approved the 13th day of May, A. D. 1909. This Act does not authorize the Dairy and Food Commissioner, nor any agent of the Bureau, to approve labels. The Bureau, therefore, will not give its approval to any label. Any printed matter upon the label implying that this Bureau has approved it will be without warrant. It is believed that with the law and regulations before the manufacturers, they will have no difficulty in arranging labels in conformity with the requirements set forth.

RULES Nos. 11, 12, 13 and 14.

Issued July 8, 1909.

RULE NO. 11, PREPARED MUSTARD. The names, prepared mustard, German mustard, French mustard, mustard paste, shall be used only to designate pastes composed of a mixture of ground mustard seed, or mustard flour, with salt, spices and vinegar, and calculated free from water, fat and salt, shall contain not more than twenty-four (24) per centum of carbohydrates, calculated as starch, determined according to the official methods, not more than twelve (12) per centum of crude fibre, nor less than thirty-five (35) per centum of protein, derived solely from the materials named.

RULE NO. 12, FLAVORING EXTRACTS. The names, flavoring extract flavor, flavoring, essence and tincture, as applied to articles intended for use in the preparation of foods, shall be used only to designate solutions in ethyl alcohol of proper strength of the sapid and odorous principles derived from an aromatic plant, or parts of the plant, with or without its coloring matter, and shall conform in specific name to the plant used in its preparation.

Flavoring solutions, in the preparation of which flavoring substances not derived from the plant specifically named have been added, shall not be designated as if prepared solely from the aromatic plant named.

An imitation flavoring extract shall not be given a name nor bear upon its label any statement, design or device that shall in any way indicate that it is the flavoring extract which it imitates.

RULE NO. 13, MARASCHINO CHERRIES. Maraschino cherries must not contain sulphurous acid, sulphur dioxide, sulphites, salicylic acid, or other preservative prohibited by law, nor any other ingredient deleterious to health, and if artificially colored, such coloring must be effected solely by the use of harmless animal or vegetable colors, or of the coal tar dyes named in Rule 5, and when so colored the fact shall be plainly declared on the label.

RULE NO. 14, CONFECTIONERY. Mineral substances of all kinds, whether poisonous or not, are forbidden in confectionery. The addition of any alcoholic liquor to confectionery is prohibited, and no alcohol may be added to it except as the alcohol occurs in the customary alcoholic tinctures or extracts used for flavoring purposes, or as a solvent for glazes.

SPECIAL NOTICE TO RETAIL DEALERS.

The new Food Act of Pennsylvania, approved the 13th day of May, A. D. 1909, protects innocent retail dealers when its provisions are complied with. In order to avail themselves of this protection, it is

important that every retail dealer secure from the manufacturer, wholesaler or jobber from whom he makes purchases, a signed guarantee of each invoice of goods. In order that the goods may be subsequently identified, it is important that the date of purchase be marked upon the goods secured under each invoice. Where the goods are contained in separate packages, this identification can readily be secured by the use of a rubber stamp giving the date of purchase. Unless the retail dealer is able to identify with absolute certainty the vendor from whom his goods were procured, the Act will not protect him. This will require the greatest care, not only in marking the date of purchase, but in keeping the articles purchased from different manufacturers, wholesalers or jobbers bearing the same brand, entirely apart from each other, so that at any time the identification of the vendor of each article can be clearly established. It is equally important that the retail dealer shall keep the articles purchased in precisely the same condition as when they are received. A failure to distinctly identify the vendor, or to clearly prove that articles purchased have been kept in the exact condition as to quality as when purchased, will deprive the retail dealer of any protection.

When an agent of the Dairy and Food Bureau calls upon a retail dealer, it is requested and confidently expected that courtesy will be exercised both by the dealer and the agent.

JAMES FOUST,
Dairy and Food Commissioner.

OLEOMARGARINE AND RENOVATED BUTTER LICENSES.

RULES AND REGULATIONS FOR THE GUIDANCE AND GOVERNMENT OF PERSONS PROPOSING TO ENGAGE IN THE MANUFACTURE, SALE OR USE OF OLEOMARGARINE OR RENOVATED BUTTER.

1. No license will be granted to a non-resident of the State of Pennsylvania.

2. No license will be transferred from any person, firm or corporation convicted of any violation of the Acts of Assembly under which such license is issued, nor while proceedings are pending for violation of said Acts against such person, firm or corporation.

3. When a license has been issued to a certain address, a second license will not be issued to the same address for the same year or fractional part thereof.

4. No license certificate permits the sale of oleomargarine from wagons, or from any other place except that designated in said license certificate.

5. Remittance (either Bank Draft, Cashier's Cheque, or Certificate of Deposit, preferred), for license fees must accompany the application for license. Individual cheques must be certified by the bank on which same are issued or drawn. Cheques and drafts must be made payable to the order of the State Treasurer, and upon receipt thereof by the DAIRY AND FOOD COMMISSIONER, if the application is approved, a license certificate will be promptly issued.

6. The attention of intending applicants for license and of all

licensees, is especially directed to that portion of Section 7 of the Act of 29th of May, 1901, which provides: "that upon conviction of any subsequent offense, the person so offending shall be punished by a fine of not less than five hundred dollars, nor more than one thousand dollars, and by imprisonment in the county jail for not less than six months nor more than twelve months."

The express direction of said Act is imprisonment in addition to the minimum fine therein specified.

In addition to the fine and imprisonment imposed for second offenses, injunction proceedings will be instituted, and no license will be transferred from any person against whom such proceedings are pending.

LICENSE APPLICATION BLANKS SUPPLIED.

The Dairy and Food Commissioner will supply applicants with the proper printed blank forms which must be used by all applicants for oleomargarine and renovated butter license certificates. These forms furnish detailed information as to license fees, etc. They also show the respective periods of time for which licenses are issued. A certificate issued with the beginning of the year must include payment for the entire year, while those issued at a later period must include payment for the part of the year remaining, always dating from the first day of the month in which the application was filed.

SCHEDULE OF LICENSE FEES.

The following tabulated statement shows the respective amounts due the Commonwealth for the various licenses named, for the entire year, or fractional parts thereof, and checks or drafts must be sent for the correct amount.

Kind of License.	Cost of License.											
	Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
Manufacturer's license,	\$1,000	\$916 67	\$833 34	\$750 00	\$666 67	\$583 34	\$500 00	\$416 67	\$333 34	\$250 00	\$166 67	\$83 34
Wholesale license,	500	458 34	416 67	375 00	333 34	290 67	250 00	208 34	166 67	125 00	83 34	41 67
Retail license,	100	91 67	83 34	75 00	66 67	58 34	50 00	41 67	33 34	25 00	16 67	8 33
Hotel or restaurant license,	50	45 84	41 67	37 50	33 34	29 18	25 00	20 84	16 67	12 50	8 34	4 17
Boarding house license,	10	9 16	8 33	7 50	6 66	5 83	5 00	4 16	3 33	2 50	1 66	83

NAMES AND PLACES OF APPLICANTS.

If the application is signed by a firm name, kindly supply full names of partners constituting the firm; when signed by a company give name of president, secretary and general manager.

Sign names in full—for example: "John Jacob Doe," NOT, "J. J. Doe."

It is also imperative that you give the number of the building in which your place of business is located and the street upon which it is situated. If it does not have a number, give the name by which it is known, or describe its location as nearly as possible by some well known landmark, in order that it may be definitely located.

This information is essential in order to secure a license certificate, and failure to furnish the same will mean indefinite delay in the issuing of said license certificate.

Two signs which will be supplied by the Dairy and Food Division, must be hung up in conspicuous places on the walls of the room or store in which oleomargarine is sold. Each package must be plainly marked "Oleomargarine," as the law directs, and oleomargarine or butterine must be "free from coloration or ingredients that cause it to look like butter."